

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 15, 1995 Decided June 27, 1995

No. 94-1647

NATURAL RESOURCES DEFENSE COUNCIL, INC.,  
PETITIONER

v.

CAROL M. BROWNER, ADMINISTRATOR,  
ENVIRONMENTAL PROTECTION AGENCY,  
RESPONDENTS

On Petition for Review of an Order of the  
Environmental Protection Agency

*Sharon Buccino* argued the cause for petitioner. With her on the briefs was *David M. Driesen*. *David G. Hawkins* entered an appearance.

*Ronald M. Spritzer*, Attorney, U.S. Department of Justice, argued the cause for respondents. With him on the brief were *Lois J. Schiffer*, Assistant Attorney General, and *Jan M. Tierney*, General Counsel, Environmental Protection Agency.

Before: WALD, ROGERS and TATEL, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* ROGERS.

ROGERS, *Circuit Judge*: The 1990 amendments to the Clean Air Act revised the regulatory framework for achieving national air quality goals. Among other changes, the amendments altered the schedule of State Implementation Plan ("SIP") submissions and Environmental Protection Agency ("EPA") responses thereto, and strengthened the sanctions that apply in the event of state noncompliance. Under § 179(a), 42 U.S.C. § 7509(a) (Supp. V 1993), an EPA finding of one of four possible SIP defects will trigger mandatory sanctions unless the state takes corrective action within 18 months. Petitioner Natural Resources Defense Council ("NRDC") challenges an EPA final rule that permits a state to halt the 18-month "sanctions clock," when it is triggered by an EPA finding of incompleteness or nonsubmittal, by submitting a complete plan, even if that plan is ultimately unapprovable due to substantive inadequacies. Because the language of § 179 plainly leads to the approach adopted by EPA, and NRDC has pointed to no persuasive evidence that Congress intended

otherwise, we deny the petition for review.

## I.

**A. Statutory Framework.** The Clean Air Act, as amended in 1970 and 1977,<sup>1</sup> establishes a partnership between EPA and the states for the attainment and maintenance of national air quality goals. *See* 42 U.S.C. §§ 7401-7515 (1988 & Supp. V 1993). Under this regime, EPA has set health-based primary "National Ambient Air Quality Standards" ("NAAQS") for six pollutants. *See* 40 C.F.R. part 50 (1994).<sup>2</sup> The states are responsible in the first instance for meeting the NAAQS through state-designed plans that provide for attainment, maintenance, and enforcement of the NAAQS in each air quality control region. Thus, each state determines an emission reduction program for its nonattainment areas, subject to EPA approval, within deadlines imposed by Congress.

In 1990, Congress amended the Act to revise the timing and content of the SIP requirements and provide new incentives and sanctions to encourage state compliance with Clean Air Act obligations. *See* Clean Air Act of Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399. The 1990 amendments extended the Act's attainment deadlines, but added short-term deadlines for many intermediate steps, including SIP submissions. The amendments also created new mandatory sanctions for states that fail to comply with SIP submission and implementation duties.

Section 110 of the Clean Air Act, 42 U.S.C. § 7410, sets forth the basic processes and requirements governing SIP submissions. Within 60 days of the submission, but no later than six months after the submission deadline, EPA must review each submission for completeness. 42 U.S.C. § 7410(k)(1)(B). The Act defines a complete submission as one that contains "the information necessary to enable" EPA to "determine whether the plan submission complies" with the NAAQS requirements. *Id.* § 7410(k)(1)(A). Pursuant to the Act, EPA has developed criteria for evaluating

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<sup>1</sup>Although the Clean Air Act was enacted in 1963, "it was the Clean Air Act Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676 (1970), that gave the Clean Air Act the basic structure it retains today." *Coalition for Clean Air v. Southern Cal. Edison*, 971 F.2d 219, 221 (9th Cir. 1992).

<sup>2</sup>In addition to ground-level ozone, NAAQS cover lead, sulfur dioxide, carbon monoxide, nitrogen oxide, and small particulate matter. *See id.*

whether a plan meets the completeness requirement. *See* 40 C.F.R. § 51.103 & App. V.<sup>3</sup> If EPA finds the plan complete, it has twelve months to determine whether the plan meets the substantive requirements of the Act. 42 U.S.C. § 7410(k)(2). At this stage, EPA evaluates the detailed models for pollution control submitted by states and compares them with the federal standards and attainment deadlines.<sup>4</sup> EPA may approve the plan in whole or in part, disapprove the plan, or conditionally approve the plan based on a state commitment to adopt specific enforcement methods. *Id.* § 7410(k)(3)-(4).

Congress established a number of incentives for states to comply with SIP submission and implementation deadlines. These include mandatory sanctions, discretionary sanctions, and imposition of a Federal Implementation Plan ("FIP"). Of importance here, § 179 requires EPA to impose mandatory sanctions on states that fail to comply with SIP obligations. That provision lists several EPA findings that trigger an 18-month sanctions clock, at the end of which EPA must impose one of two sanctions "unless *such deficiency* has been corrected." 42 U.S.C. § 7509(a) (emphasis added). The triggering events are: a finding of state failure to make a required plan submission or failure to submit a complete plan; disapproval of a SIP in whole or in part; or a finding of state failure to implement any element of an approved plan. *Id.* § 7509(a)(1)-(4). Once sanctions have been imposed, they remain in place until EPA determines that the state "has come into compliance" with its Clean Air Act obligations. *Id.* § 7509(a).<sup>5</sup>

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<sup>3</sup>Under these criteria, a complete plan must include (among other things) evidence of legal authority under state law to adopt and implement the plan, copies of regulations and orders necessary to implement the program, and technical documentation of the state program demonstrating its compliance with NAAQS attainment deadlines. *See id.*

<sup>4</sup>For each of the NAAQS pollutants, the Act provides separate attainment deadlines depending on the severity of the pollution problem in a particular area. *See* 42 U.S.C. §§ 7511 (ozone), 7512 (carbon monoxide), 7513 (particulate matter), 7514a (sulfur oxides, nitrogen dioxide, and lead). For each type of pollutant and area classification, the Act specifies a range of different programs that states must adopt to meet NAAQS attainment goals. *See, e.g., id.* § 7511a (ozone plan provisions).

<sup>5</sup>Under § 179(b), 42 U.S.C. § 7509(b), there are two mandatory sanctions for noncomplying states: (1) limitations on certain federal highway funding, and (2) "offset" limitations on certain developments in affected areas that require each new stationary emission source to be paired with a reduction in area emissions amounting to double the amount of increased emissions from the new source. One of these sanctions must be imposed if a state has not corrected the § 179

In addition, § 110(m), 42 U.S.C. § 7410(m), authorizes EPA to impose discretionary sanctions on a state at any time after EPA makes one of the four findings set forth in § 179(a). Consequently, in the event of state delay in submission and implementation of NAAQS program elements, EPA can levy sanctions without waiting for expiration of the 18-month period required before mandatory sanctions are imposed. The available sanctions are the same as those under the mandatory provision, but unlike the mandatory § 179(b) sanctions, discretionary sanctions are not limited to any particular nonattainment area and can be imposed statewide. *See Criteria for Exercising Discretionary Sanctions Under Title I of the Clean Air Act*, 59 Fed. Reg. 1476 (Jan. 11, 1994).

The 1990 Amendments continued EPA's responsibility to prepare and impose a FIP within two years following a state's failure to develop and implement a complete and approved plan. *See* 42 U.S.C. § 7410(c). In the event of a deficiency finding due to nonsubmission, incompleteness, or disapproval, EPA must promulgate a federal plan for the attainment or maintenance of NAAQS in a particular region. The FIP provides an additional incentive for state compliance because it rescinds state authority to make the many sensitive technical and political choices that a pollution control regime demands. The FIP provision also ensures that progress toward NAAQS attainment will proceed notwithstanding inadequate action at the state level. In contrast to the mandatory sanctions, which a state can avoid merely by correcting the submission deficiency, FIP promulgation can be avoided only if EPA has actually approved the state's SIP submission.<sup>6</sup>

Finally, the Act provides that when a nonattainment area fails to meet an attainment deadline, EPA must reclassify that area to the next higher classification. For example, a marginal ozone nonattainment area must be reclassified to a moderate nonattainment area within six months after the attainment date has not been met. *See* 42 U.S.C. § 7511(b)(2); *see also id.* §§ 7512(b)(2) (carbon

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deficiency within 18 months after the EPA finding; the other sanction must be imposed within the next six months if the deficiency remains uncorrected. If EPA determines that the state has not acted in good faith, however, both sanctions apply simultaneously. 42 U.S.C. § 7509(a).

<sup>6</sup>Section 110(c)(1) requires EPA to promulgate a FIP "unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan." 42 U.S.C. § 7410(c)(1).

monoxide), 7513(b)(2) (particulate matter). Once reclassified, an area must meet the requirements of the new classification. *See, e.g., id.* §§ 7511a(i), 7511(b)(4) (specifying additional obligations applicable to severe ozone areas that fail to attain). Because the control regime increases in cost and complexity with each step up the nonattainment ladder, *see, e.g., id.* § 7511a(b)-(d) (specifying additional control measures for higher ozone classification levels, such as enhanced vehicle inspection and maintenance programs), the reclassification provisions function as yet another incentive for states to attain their air quality objectives within the statutory deadlines.

**B. Final Rule.** EPA's final rule interpreting § 179 established the order in which EPA will apply the mandatory sanctions of § 179(b) and the procedures for starting and stopping the 18-month sanctions clock. *See* 59 Fed. Reg. 39,832, 39,837-52 (August 4, 1994). EPA explained that under its reading of § 179, a state can halt the sanctions clock by correcting the specific SIP deficiency that triggered the clock under § 179(a). In particular, the final rule provides that when a state fails to submit a complete plan within six months of the submission deadline, the subsequent submission of a complete plan will permanently stop and reset the sanctions clock, even if the plan is ultimately unapprovable. *Id.* at 39,857-58. Thus, when EPA determines that a state has missed a submission deadline or submitted an incomplete plan, the 18-month countdown begins, and if the state submits a plan that meets EPA completeness criteria within that 18-month period, no sanctions will apply. EPA then has twelve months to review the plan's technical elements for compliance with the Act's substantive requirements; if EPA finds one or more of these elements lacking, EPA will disapprove the plan and a new 18-month clock will begin.

## II.

Petitioner NRDC timely petitioned for review of EPA's interpretation, *see* 42 U.S.C. § 7607(b)(1), taking issue with the type of state action EPA views as sufficient to halt the sanctions clock when a state has failed to submit a complete SIP. NRDC contends that the final rule conflicts with Congress' intent to impose mandatory sanctions no later than 18 months after EPA finds that a state has not submitted an approvable plan. In the alternative, NRDC maintains that even if Congress' intent is unclear, the rule is unreasonable because it "destroys the intricate structure" of the 1990

amendments, which Congress designed to ensure that states take necessary steps to comply with federal air quality standards by statutory deadlines. Accordingly, the issue in the instant appeal is EPA's construction of the term "such deficiency" to refer to each specific finding or deficiency listed in § 179(a), whereby a state can halt a sanctions clock, triggered by an EPA finding of incompleteness, by submitting a complete plan.

The court reviews NRDC's challenge pursuant to the framework set forth in *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Under this analysis, the court must first exhaust the "traditional tools of statutory construction" to determine whether Congress has spoken to the precise question at issue. *Id.* at 843 n.9. If the court can determine congressional intent, "then that interpretation must be given effect." *Kansas City v. Department of Housing & Urban Dev.*, 923 F.2d 188, 191 (D.C. Cir. 1991) (citing *United Food & Commercial Workers*, 484 U.S. 112, 123 (1987)). If, on the other hand, "the statute is silent or ambiguous with respect to the specific issue," then the court will defer to a "permissible" agency construction of the statute. *Chevron*, 467 U.S. at 843. We conclude under step one of the *Chevron* analysis that the language and context of § 179 clearly reveal that Congress intended to allow states to avoid mandatory sanctions by correcting only the specific deficiency that initially triggered the sanctions countdown.

Our inquiry begins, as it must, with the text of the statute. *See Demarest v. Manspeaker*, 498 U.S. 184, 187 (1991); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). After setting forth several types of EPA deficiency findings—for nonsubmittal, incompleteness, substantive unapprovability, or nonimplementation—§ 179(a) provides that:

*unless such deficiency has been corrected* within 18 months after the finding, disapproval or determination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) of this section shall apply...."

42 U.S.C. § 7509(a) (emphasis added). Under the only natural reading of the term, "such deficiency" refers to the "state failure[ ]" (as the caption puts it) that gave rise to the EPA finding or determination listed in § 179. As such, the deficiency that must be remedied is the specific deficiency that, by leading to an EPA "finding, disapproval or determination," triggered the sanctions clock. It follows that when EPA activates a sanctions clock because a state has failed to submit a complete

SIP, EPA must also halt the clock when the state corrects that specific deficiency. EPA adopted this interpretation in its final rule, *see* 58 Fed. Reg. at 39,850-51, and we agree that the statute requires it.<sup>7</sup>

NRDC's contrary reading of § 179 lacks the textual support necessary to overcome EPA's straightforward construction. NRDC maintains that Congress designed § 179 to address only two types of state SIP deficiencies: a state's failure to submit a SIP that meets the Act's requirements, or a state's failure to implement an approved SIP. Then, after a finding of nonsubmittal or incompleteness, the 18-month clock would be activated and could only be stopped when a state corrects the underlying

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<sup>7</sup>EPA finds additional support for its interpretation by comparing § 179(a) with § 110(c)(1), which requires EPA to develop a FIP in the event of state noncompliance. Under § 110(c), EPA must act within two years of a finding or disapproval listed in § 179(a), "unless the State corrects the deficiency, *and the Administrator approves the plan or plan revision*, before the Administrator promulgates such Federal implementation plan." (emphasis added). Because § 110(c) contains a SIP approval requirement that does not appear in § 179(a), EPA maintains that Congress knew how to require EPA approval to prevent a sanction from taking effect, and did not intend such a requirement to halt the sanctions clock under § 179. However, NRDC persuasively responds that inclusion of a specific approval requirement in § 110(c) is not inconsistent with its construction of the phrase "such deficiency" in both § 110(c) and § 179. Under this view, § 110(c) imposes a higher threshold of EPA approval before halting the FIP clock in order to ensure that a working plan is in place for each nonattainment region within two years. By contrast, NRDC reads § 179 to require a state to submit only an approvable plan—a more modest requirement that would not penalize the state for delays caused by the lengthy EPA approval process. NRDC thus explains that the approval requirement in § 110(c) is not superfluous under its interpretation, and for this reason we find EPA's additional textual argument unavailing. By the same token, however, § 110(c) provides no support for NRDC's interpretation of § 179, which (we conclude) conflicts with the plain language of the statute.