

EPA Rejects Colorado's Regional Haze Plan Over Disputed Coal Plant Closure

Giancarlo Vargas, Legal Fellow
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On January 26, 2026, EPA disapproved Colorado's revision to its regional haze State Implementation Plan (SIP), concluding that the plan's enforceable closure date for a coal-fired electric generating unit, Nixon Unit 1, could violate federal or state takings law.¹

Colorado submitted its regional haze SIP revision to EPA in May 2022. The revision included 13 voluntary source closure dates, including an enforceable closure date for Nixon Unit 1, a coal-fired electric generating unit owned by Colorado Springs Utilities (CSU). CSU had voluntarily requested in 2020 that Colorado include the Nixon Unit 1 closure date in its SIP revision. However, in March 2025, just a few months before EPA's deadline to approve or deny Colorado's SIP revision, CSU rescinded its consent to close Nixon Unit 1, citing unexpected changes in circumstance.

When drafting regional haze SIP revisions, states may rely on enforceable source closure dates when determining how to make reasonable progress toward national haze reduction goals. Companies that own emissions sources — such as fossil-fueled power plants — often volunteer their expected source closure dates for inclusion in regional haze SIPs so they can avoid having to adopt stricter, less cost-efficient emissions controls.

In this quick take, I briefly describe the Regional Haze Rule and Colorado's submitted SIP revision, summarize EPA's proposed *partial* disapproval that became a final *full* SIP revision disapproval, and highlight some of the legal arguments raised by commenters against EPA's proposed disapproval. I then look ahead at how EPA may raise similar takings arguments to reject other states' SIPs.

The Regional Haze Rule

Haze is visibility impairment caused by the presence of particulate matter and its precursors (e.g., NO_x and SO₂) in the atmosphere. Haze-forming pollution can come from natural sources, such as wildfire soot, or from anthropogenic sources, such as motor vehicles, power generation, and manufacturing.² To address regional haze — haze produced across a broad geographic area — EPA promulgated the Regional Haze Rule (RHR) in 1999 in accordance with section 169A of the Clean Air Act.³ The RHR established a process that requires states to address anthropogenic air pollution generated within their borders that could impact visibility both within and outside the state.⁴

Under the RHR, states must periodically submit SIP revisions to EPA. These revisions must provide updates on visibility conditions and progress made toward improving visibility in protected areas, and describe the state's long-term strategy for meeting visibility impairment goals, among other things.⁵ A state's long-term strategy must explain which emissions sources the state chose to regulate and

¹ Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048 (Jan. 26, 2026).

² EPA, *Basic Information about Visibility*, perma.cc/PL8V-FKTA (last updated May 23, 2025).

³ Regional Haze Regulations, 64 Fed. Reg. 35714 (July 1, 1999); 42 U.S.C. § 7491.

⁴ Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 31926, 31927-28 (July 16, 2025).

⁵ See 40 C.F.R. § 51.308(f) (outlining the process for drafting regional haze SIP revisions). For a detailed breakdown of the components of 40 C.F.R. § 51.308(f) and the process that states follow to draft their regional haze SIP revisions, see Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 31926, 31929-31 (July 16, 2025).

“must evaluate and determine the emission reduction measures that are necessary to make *reasonable progress*” toward national visibility goals.⁶

The Clean Air Act identifies four factors states must consider when making “reasonable progress” determinations: (1) the “costs of compliance”; (2) the time needed for compliance; (3) the “energy and nonair quality environmental impacts of compliance”; and (4) the “remaining useful life” of affected sources.⁷ Using these factors, and additional regulatory criteria,⁸ states identify what measures are needed to make reasonable progress toward national visibility goals and incorporate these measures into their SIP revisions.⁹ EPA then reviews submitted SIP revisions for compliance with the RHR’s requirements.¹⁰

As outlined in EPA’s 2019 RHR guidance, states may treat an “enforceable shutdown date” as the “remaining useful life” of a source — rather than the source’s *actual* remaining useful life — when performing a four-factor reasonable progress analysis.¹¹ Companies often volunteer to include enforceable shutdown dates for planned source retirements in a state’s regional haze SIP to avoid more stringent haze controls — such as tighter emissions limits — that may not be cost-effective, particularly for older units nearing the end of their expected lives.¹²

Colorado’s 2022 Regional Haze SIP Revision

In May 2022, Colorado submitted its regional haze SIP revision for the 2018-2028 implementation period of the RHR.¹³ Consistent with EPA’s 2019 guidance, the SIP revision’s long-term strategy included 13 planned retirements of fossil-fueled electric generating units in the state.¹⁴ Colorado explained that these retirements were expected to result in “significant reductions of NO_x, SO₂, PM₁₀, and GHG emissions” in line with the state’s RHR and other air quality goals.¹⁵

⁶ 40 C.F.R. § 51.308(f)(2) (emphasis added).

⁷ See 42 U.S.C. § 7491(g)(1).

⁸ See 40 C.F.R. § 51.308(f)(2)(i)-(iv).

⁹ *Id.*

¹⁰ *Id.* § 51.308(f).

¹¹ See EPA, *Guidance on Regional Haze State Implementation Plans for the Second Implementation Period*, at 33-34 (Aug. 20, 2019), available at perma.cc/Z4EY-9EMS (“To the extent [an enforceable requirement for the source to cease operation before the end of its useful life] is being relied upon for a reasonable progress determination, the measure would need to be included in the SIP and/or be federally enforceable.”).

¹² See COLO. AIR POLLUTION CONTROL DIV., *Comment Letter on Proposed Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period*, at 16 (Sept. 15, 2025), available at <https://www.regulations.gov/comment/EPA-R08-OAR-2024-0607-0059> [hereinafter Colorado Comment] (explaining how several facilities in Colorado volunteered for enforceable retirement dates as a more cost-effective alternative to installing additional emissions controls); see also, e.g., COLO. AIR POLLUTION CONTROL DIV., *Colorado Visibility and Regional Haze State Implementation Plan for the Twelve Mandatory Class I Federal Areas in Colorado*, at 74 (Dec. 17, 2021), available at <https://www.regulations.gov/document/EPA-R08-OAR-2024-0607-0015>, select “Colorado 2022 SIP submission Regional Haze SIP-Reg 23_07,” select “26_Regional Haze SIP Element (2020 and 2021).pdf,” [hereinafter Proposed Colorado SIP] (noting that further controls were not appropriate for Nixon Unit 1 given its short remaining useful life).

¹³ See *Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period*, 90 Fed. Reg. 31926, 31927 (July 16, 2025).

¹⁴ *Id.* at 31937.

¹⁵ 5 COLO. CODE REGS. § 1001-27, pt. B (2020).

One of these retirements was the planned closure of CSU's Nixon Unit 1 coal-fired generating unit, scheduled for retirement by December 31, 2029.¹⁶ CSU first requested that Colorado incorporate the Nixon Unit 1 retirement date into its proposed SIP revision on July 23, 2020.¹⁷ CSU explained that it decided to retire Nixon Unit 1 through its resource planning process, in which it accounted for "reliability, environmental impacts, flexibility/diversity and innovation."¹⁸

Nearly five years later, on March 11, 2025, CSU informed Colorado and EPA of an "urgent need to defer the retirement of Nixon Unit 1."¹⁹ CSU cited unforeseen difficulties in securing replacement energy generation and asked that Nixon Unit 1's enforceable closure date be removed from Colorado's SIP revision.²⁰ CSU asserted that removing Nixon Unit 1's mandatory closure date would "have no impacts on the approvability" of the SIP revision because the emissions reductions associated with shutting the unit down were "unnecessary for meeting Colorado's reasonable progress goals" under the RHR.²¹

EPA's Proposal and Final Disapproval

On July 16, 2025, EPA proposed to partially approve and partially disapprove Colorado's regional haze SIP revision.²² EPA proposed approving most of the SIP revision, including Colorado's visibility calculations, reasonable progress goals, and several portions of its long-term haze reduction strategy.²³ However, EPA proposed disapproving the portions of the long-term strategy related to the 13 enforceable source closures.²⁴

In its proposal, EPA stated that Colorado had not provided "necessary assurances" that the SIP revision's 13 enforceable source closure dates were not uncompensated *per se* or regulatory takings in violation of the U.S. Constitution's Takings Clause or similar state laws.²⁵ Notably, EPA proposed rejecting all 13 enforceable source closure dates for an illegal takings risk, even though only one source – Nixon Unit 1 – had requested that the state no longer rely on its closure deadline.²⁶

In comments on EPA's proposed partial disapproval, several states and non-governmental organizations challenged EPA's novel requirement for a takings analysis under the Clean Air Act's

¹⁶ See Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 31926, 31934 (July 16, 2025).

¹⁷ COLO. SPRINGS UTILS., *Att 2 Letter from CSU Req Drake and Nixon Retirement Dates SIP*, at 1 (July 23, 2020), available at <https://www.regulations.gov/comment/EPA-R08-OAR-2024-0607-0059>.

¹⁸ See COLO. SPRINGS UTILS., *In the Matter of Adopting a New Regulation Number 23 and Making Changes in Regulation*, at 7 (Sept. 18, 2020), available at <https://www.regulations.gov/document/EPA-R08-OAR-2024-0607-0004>, select "14_City of Colorado Springs & Colorado Springs Utilities.pdf".

¹⁹ COLO. SPRINGS UTILS., *Colorado Springs Utilities Comments to CDPHE*, at 1 (March 11, 2025), available at <https://www.regulations.gov/document/EPA-R08-OAR-2024-0607-0026>.

²⁰ *Id.* at 1-2.

²¹ *Id.*

²² See Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 31926 (July 16, 2025).

²³ *Id.* at 31927.

²⁴ *Id.* at 31937-38 ("EPA proposes to find there is a risk that enforceable source closure provisions, without just compensation, would violate the Federal Takings Clause and possibly comparable provisions of State law, and that Colorado has not provided the necessary assurances that such violations would not occur.")

²⁵ *Id.* Under Clean Air Act section 110(a)(2)(E)(i), when a state submits a SIP revision to EPA, the state must provide "necessary assurances" that it is "not prohibited by any provision of Federal or State law from carrying out such [SIP revision] or portion thereof." *Id.* at 31938-39.

²⁶ *Id.* at 31938 (proposing to find that enforceable source closure provisions, without just compensation, categorically raise takings risks).

necessary assurances provision and EPA's interpretation of takings caselaw.²⁷ Colorado and the Mid-Atlantic/Northeast Visibility Union also noted alternative actions short of a partial disapproval that EPA could take to address its takings concerns.²⁸ CSU submitted a comment in support of EPA's partial approval/disapproval, asserting again that the emissions reductions from retiring Nixon Unit 1 in 2029 were not necessary for Colorado to satisfy its RHR obligations, and thus even if the closure date was removed from the SIP revision, it would be "appropriate for EPA to conclude that Colorado ha[d] fulfilled all its regulatory requirements for the second [implementation] period."²⁹

On January 26, 2026, EPA finalized its rule, determining that Colorado had not provided necessary assurances that the "forced closure" of Nixon Unit 1 did not constitute an illegal *per se* or regulatory taking.³⁰ In its final rule, EPA shifted from its earlier position that *all* enforceable source closures posed takings risks, concluding only that the "unconsented closure" of Nixon Unit 1 risked a potential taking.³¹ However, despite adopting this narrower takings argument, EPA's final rule disapproved the entirety of Colorado's SIP revision, not just the portions of the plan related to the 13 enforceable source closures.

EPA explained that when a state learns that a regulated source no longer intends to shut down as originally contemplated in a SIP revision, the state must take "appropriate steps," which could include: (1) revising or supplementing the SIP revision, (2) withdrawing the SIP revision, or (3) "providing EPA with necessary assurances that the closure would not violate federal or state law."³² EPA found that Colorado took none of these steps and therefore rejected the entirety of Colorado's SIP revision.

Legal Questions Arising from EPA's SIP Revision Disapproval

Comments on EPA's proposed partial disapproval revealed significant disagreement with EPA's expansive application of the Clean Air Act's necessary assurances provision and its aggressive interpretation of takings caselaw. Because EPA's final disapproval did not resolve these legal disputes, it is likely that both EPA and commenters will raise similar arguments in future SIP reviews.³³

²⁷ See, e.g., Colorado Comment, *supra* note 12, at 25-35 (disputing EPA's takings analysis); OREGON DEPT. OF ENV'T QUALITY, *Oregon SIP Comments 9.15.25*, at 2-8 (Sept. 15, 2025), available at <https://www.regulations.gov/comment/EPA-R08-OAR-2024-0607-0062> (same); EARTHJUSTICE, *Conservation Organizations Comments on EPA Disapproval of Colorado Regional Haze SIP*, at 39-53 (Sept. 15, 2025) (same).

²⁸ See Colorado Comment, *supra* note 12, at 38-39; MID-ATLANTIC/NORTHEAST VISIBILITY UNION, *Comment Letter on Proposed Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period*, at 4 (Sept. 15, 2025), available at <https://www.regulations.gov/comment/EPA-R08-OAR-2024-0607-0055> (suggesting EPA consider a conditional approval of Colorado's SIP revision).

²⁹ See COLO. SPRINGS UTILS., *09.12.25 Colorado Springs Utilities' Comments on EPA's Proposed Partial Approval of Colorado Regional Haze Plan - Filed*, at 4 (Sept. 12, 2025), available at <https://www.regulations.gov/comment/EPA-R08-OAR-2024-0607-0052>.

³⁰ Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048, 3049 (Jan. 26, 2026) ("The analysis in this notice explains the flaws with the unconsented source closure of Nixon Unit 1 at the Ray D. Nixon Power Plant and why it requires a full disapproval.").

³¹ See *id.* at 3055 (citing takings concerns only with Nixon Unit 1, not enforceable source closures broadly when disapproving Colorado's regional haze SIP).

³² *Id.* at 3049.

³³ In fact, EPA already raised the same combination of takings concerns and the need for necessary assurances when it proposed partially disapproving Hawaii's regional haze SIP revision on February 17, 2026.

Below, I outline several of these legal disagreements. I then address EPA’s decision to escalate its proposed partial disapproval of Colorado’s SIP revision into a full disapproval — an action the agency offered little explanation for, and one that raises additional considerations for states in future SIP reviews.

The Necessary Assurances Requirement

The Clean Air Act requires a state’s SIP to provide “necessary assurances” that the state “will have adequate personnel, funding, and authority” under state law to carry out the provisions included in the SIP, and that the state is “not prohibited by any provision of Federal or State law from carrying out” the SIP’s provisions.³⁴

In its final disapproval of Colorado’s SIP revision, EPA stated that the “best reading” of this provision requires EPA to disapprove SIP revisions that risk violating federal or state law unless the state provides necessary assurances that such a violation will not occur when the SIP revision is implemented.³⁵ Here, EPA concluded that because neither Colorado’s SIP revision nor Colorado’s comment on EPA’s proposal alleviated EPA’s concern that the “forced closure” of Nixon Unit 1 could be an uncompensated taking, EPA “lack[ed] authority” to approve the SIP revision.³⁶

Colorado’s comment on EPA’s proposal disputed this application of the necessary assurances provision. Colorado asserted that EPA historically applied the Clean Air Act’s necessary assurances provision more narrowly, focusing primarily on whether states had “identified adequate resources and authority to implement [a] proposed plan.”³⁷ The state asserted it was more rare that EPA would “evaluate explicit legal prohibitions” against portions of a SIP, as it did with Colorado’s SIP revision.³⁸ Colorado also noted that EPA’s past requests for necessary assurances tended to address “concrete and narrowly defined” legal questions.³⁹ Here, by contrast, Colorado argued that EPA was using the necessary assurances provision to advance “speculative legal theories” around takings and grid reliability.⁴⁰

Takings Analysis

In its final rule, EPA found that the unconsented closure of Nixon Unit 1 could be “an uncompensated taking *per se* or a partial or full regulatory taking” in violation of the U.S. Constitution.⁴¹ Relying on *Cedar Point Nursery v. Hassid*,⁴² EPA stated that “a *per se* taking may occur when the government deprives property owners of exclusive rights to even a portion of their

See Partial Approval and Partial Disapproval of Air Quality Implementation Plans; Hawaii; Regional Haze State Implementation Plan for the Second Implementation Period, 91 Fed. Reg. 7204, 7217 (Feb. 17, 2026).

³⁴ 42 U.S.C. § 7410(a)(2)(E)(i).

³⁵ Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048, 3051 (Jan. 26, 2026).

³⁶ *Id.* at 3051-53.

³⁷ Colorado Comment, *supra* note 12, at 26-27.

³⁸ *Id.* at 27.

³⁹ *Id.* at 28.

⁴⁰ *Id.*

⁴¹ Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048, 3055 (Jan. 26, 2026) (“Colorado failed to provide the necessary assurances required by CAA section 110(a)(2)(E)(i) that approval of Colorado’s 2022 regional haze SIP revision containing the unconsented closure provision for Nixon Unit 1 will not violate Federal law including an uncompensated taking *per se* or a partial or full regulatory taking.”).

⁴² *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021).

property[.]”⁴³ According to EPA, making Nixon Unit 1’s closure date federally enforceable over CSU’s objections would “appropriate CSU’s right to control the operation of its facility.”⁴⁴ Thus, “[the] unconsented deadline to close Nixon Unit 1 [was] the equivalent to a *per se* taking, permanently restricting CSU’s right over its property.”⁴⁵

Alternatively, EPA found that the closure of Nixon Unit 1 ran the risk of being a total or partial regulatory taking. EPA argued that a total regulatory taking occurs if a source closure “fully deprive[s] the source owner of all economic use of the land.”⁴⁶ Meanwhile, “[a] partial regulatory taking results when a regulation hinders the use of property but does not deprive the owner of all economically beneficial use.”⁴⁷ Under both relevant legal tests, EPA found that “[w]ithout necessary assurances . . . it [was] not possible for the EPA to ensure that approval of Colorado’s 2022 regional haze SIP revision . . . [would] not constitute a regulatory taking under the U.S. Constitution, given the administrative record.”⁴⁸

Colorado challenged EPA’s takings arguments on both its factual premise and its legal analysis. First, Colorado rejected EPA’s factual characterization of the SIP revision’s enforceable closure dates as “forced” closure provisions.⁴⁹ The state highlighted that the closure dates were established through the utilities’ own electrical resource planning processes and were submitted to the state “*by the utilities*” for inclusion in the 2022 SIP revision.⁵⁰ Thus, Colorado reasoned that because the SIP revision did not itself cause the closures, it could not be the basis of a takings claim.⁵¹

Second, Colorado disputed EPA’s application of the relevant takings law. Colorado argued that EPA’s *per se* takings caselaw did not apply because the SIP revision’s enforceable closure dates did not appropriate the units slated to close or otherwise require that the affected companies transfer personal property to Colorado.⁵² Colorado further argued that EPA’s total regulatory takings analysis was incorrect because the enforceable plant closures would not leave the affected companies with “no productive or economically beneficial use of the land.”⁵³ Finally, Colorado claimed that EPA merely restated the three-factor balancing test for partial regulatory takings from *Penn Central Transportation Co. v. New York City*⁵⁴ without explaining how the factors supported EPA’s conclusion that the enforceable closure dates could constitute takings.⁵⁵

As noted above, EPA’s final rule dismissed each of these arguments in turn.

⁴³ Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048, 3053 (Jan. 26, 2026).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 3054 (citing *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)).

⁴⁷ *Id.* (citing *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978)).

⁴⁸ *Id.*

⁴⁹ Colorado Comment, *supra* note 12, at 15.

⁵⁰ *Id.* at 30 (emphasis in original); see also COLO. SPRINGS UTILS., *Att 2 Letter from CSU Req Drake and Nixon Retirement Dates SIP*, at 1 (July 23, 2020), available at <https://www.regulations.gov/comment/EPA-R08-OAR-2024-0607-0059> (requesting that Nixon Unit 1’s December 31, 2029 retirement date be incorporated into Colorado’s regional haze SIP revision).

⁵¹ Colorado Comment, *supra* note 12, at 30.

⁵² *Id.* at 31-32.

⁵³ *Id.* at 31 (quotation marks omitted) (citing *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1017 (1992)).

⁵⁴ *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

⁵⁵ Colorado Comment, *supra* note 12, at 32-33.

EPA's Decision to Reject Colorado's SIP Revision in Full

EPA's decision to fully reject Colorado's SIP revision, rather than choose a narrower course such as a partial disapproval, is notable for two reasons.

First, EPA's full disapproval of the SIP revision *broadened* the scope of its action even as the agency *narrowed* its takings concerns. In its proposed rule, EPA suggested all 13 enforceable closure dates in Colorado's SIP revision could be illegal takings, justifying a partial disapproval of the SIP revision. By contrast, EPA's final rule concluded that only Nixon Unit 1's unconsented closure posed a takings risk, yet the agency opted for a full disapproval of the SIP revision.⁵⁶ EPA's final rule did not explain this escalation. The agency did not seek comment on a full disapproval in its proposed rule, and no commenter requested a full disapproval. Instead, EPA's final rule simply noted that EPA "ha[d] the authority to fully disapprove [a SIP] revision" that did not satisfy the Clean Air Act's requirements.⁵⁷

Second, EPA did not consider alternative approaches that could have addressed its Nixon Unit 1 takings concerns while preserving most of Colorado's regional haze SIP revision. The Clean Air Act allows EPA to conditionally approve SIP revisions,⁵⁸ and commenters, including Colorado, urged EPA to conditionally approve the SIP revision subject to the state's commitment to address EPA's concerns about Nixon Unit 1.⁵⁹ The Clean Air Act also allows partial approvals and disapprovals,⁶⁰ such as EPA's original July 2025 proposal to approve most of Colorado's SIP revision while disapproving the 13 enforceable closure dates in the long-term haze strategy.⁶¹ EPA's final rule did not consider either of these narrower alternative actions.

⁵⁶ *Compare* Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048, 3055 (citing takings concerns only with Nixon Unit 1), *with* Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 31926, 31937-38 (July 16, 2025) (proposing that all of the enforceable source closures in Colorado's SIP revision raised takings concerns).

⁵⁷ Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048, 3049 (Jan. 26, 2026).

⁵⁸ See 42 U.S.C. § 7410(k)(4) ("The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision.").

⁵⁹ See Colorado Comment, *supra* note 12, at 38-39 (suggesting EPA should have considered "working with Colorado to explore conditional approval addressing any concerns about the Nixon closure date[.]"); see also MID-ATLANTIC/NORTHEAST VISIBILITY UNION, *Comment Letter on Proposed Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period*, at 4 (Sept. 15, 2025), available at <https://www.regulations.gov/comment/EPA-R08-OAR-2024-0607-0055> ("One option is to grant a state a conditional approval coupled with a set time period, such as one year, to revise its SIP submittal in response to the EPA's concerns. This would give the state an opportunity to address issues with a facility owner/operator, such as developing a new four-factor analysis, if its previously announced shutdown plans changed after the initial SIP submittal.").

⁶⁰ 42 U.S.C. § 7410(k)(3) ("If a portion of [a SIP] revision meets all the applicable requirements of [the Clean Air Act], the Administrator may approve the plan revision in part and disapprove the plan revision in part."); see also, e.g., Partial Approval and Disapproval of Air Quality Implementation Plans; Arizona; Regional Haze State Implementation Plan for the Second Implementation Period and Prong 4 (Visibility) for the 2015 Ozone and 2012 Particulate Matter Standards, 89 Fed. Reg. 102744 (Dec. 18, 2024) (partially approving and partially disapproving Arizona's 2022 regional haze SIP revision).

⁶¹ Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 31926, 31927 (July 16, 2025) ("Pursuant to CAA section 110(k)(3), the EPA is proposing to partially approve and partially disapprove a SIP submission submitted by the State of Colorado[.]").

Looking Ahead

On March 4, 2026, Colorado and several conservation groups filed petitions in the Tenth Circuit seeking review of EPA's final rule.⁶² While briefing has not yet begun as of this publication, it is likely the petitioners will challenge EPA's takings and necessary assurances arguments, as well as EPA's failure to consider alternatives short of a full disapproval.

The litigation's outcome will likely be informative for other states undergoing their own SIP reviews. On February 17, 2026, EPA proposed to partially disapprove Hawaii's regional haze SIP revision, stating that Hawaii did not provide necessary assurances that enforceable closure dates for several fossil-fueled electric generating units were not illegal takings.⁶³ As EPA repeats the legal arguments it used to reject Colorado's SIP revision in this new rulemaking, Hawaii and other states will be watching to see how courts respond.

⁶² See COLORADO, Petition for Review (10th Cir. filed March 4, 2026), available at <https://perma.cc/N54Z-G2BY>; NAT'L PARKS CONSERVATION ASS'N & SIERRA CLUB, Petition for Review (10th Cir. Filed March 4, 2026), available at perma.cc/7PHQ-BWKQ.

⁶³ See Partial Approval and Partial Disapproval of Air Quality Implementation Plans; Hawaii; Regional Haze State Implementation Plan for the Second Implementation Period, 91 Fed. Reg. 7204, 7217 (Feb. 17, 2026).