Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

November 2, 2016

Protecting Clean Air in National Parks and Wilderness Areas

In 1977, major amendments to the Clean Air Act (CAA) included provisions for the prevention of significant deterioration (PSD) of air quality. The PSD provisions were enacted for several purposes, including

> to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value; [and]
>
> to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources....

Two significant aspects of the PSD provisions relate to federal lands and federal land managers: the classification of areas for air quality protection and management, and the role of federal land managers in maintaining and improving air quality under the CAA.

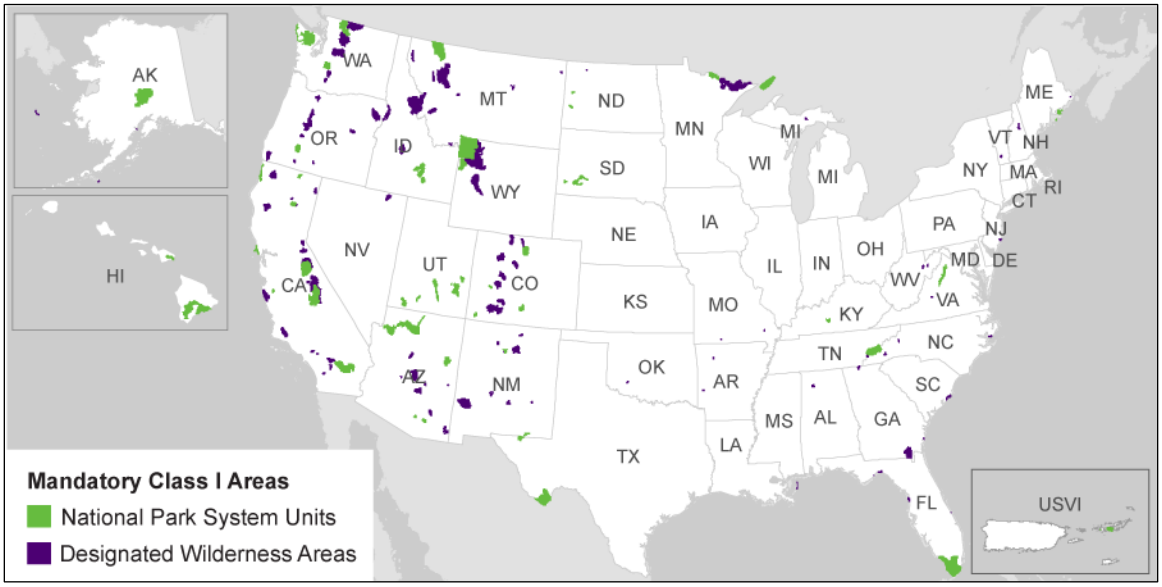
Classification of Areas

The PSD provisions establish classifications of air quality (42 U.S.C. §7472). Class I areas are those with the highest air quality and whose air quality is most stringently protected. Class II includes all other areas, unless they are designated "nonattainment" for one of the U.S. Environmental Protection Agency's (EPA's) National Ambient Air Quality Standards. The CAA provides that in areas designated as Class I, the "maximum allowable increase" in the concentration of particulate matter (5 µg/m^3 annually, or a maximum of 10 µg/m^3 during a 24-hour period) may be only about one-fourth the allowable increase in a Class II area (19 µg/m^3 and 37 µg/m^3, respectively). The allowable increase of sulfur dioxide concentrations in Class I areas is even more strictly controlled as compared to the allowable increase in a Class II area.

As specified in the statute, the Class I areas consist of certain federally protected sites that were in existence on the amendments' date of enactment, August 7, 1977. The areas that were designated as Class I included national parks larger than 6,000 acres, national wilderness areas larger than 5,000 acres, and certain other sites. Altogether, 48 National Park System units (managed by the National Park Service, in the Department of the Interior); 21 wilderness areas in the National Wildlife Refuge System (managed by the Fish and Wildlife Service, in the Department of the Interior); 86 wilderness areas in the National Forest System (managed by the U.S. Forest Service, in the Department of Agriculture); and 1 international park (managed by a U.S.-Canadian commission) were designated as Class I areas—156 sites in all (see **Figure 1**).

The PSD provisions (42 U.S.C. §7474) established a process by which the states can change area designations. However, the initial Class I areas cannot be redesignated.

Figure 1. Mandatory Class I National Parks and Wilderness Areas Under the Clean Air Act



Source: CRS, using data from EPA, "Visibility—Regional Haze Program," at https://www.epa.gov/visibility/visibility-regional-haze-program.
Note: Territories other than the U.S. Virgin Islands are not shown because they contain no Class I areas.

For new protected areas established after the enactment of the 1977 CAA amendments, the act does not provide for the areas' automatic designation as Class I. Rather, new federally protected areas can only be redesignated as Class I by the state, under the process established in the CAA. The CAA does not specify which agency or official within the state may redesignate an area as Class I; the legislation merely states in Section 164(a) that "a State may redesignate such areas as it deems appropriate as Class I areas." The section requires public hearings and an analysis of the "health, environmental, economic, social, and energy effects of the proposed redesignation," which must be made available for public inspection prior to redesignation. To date, no state has redesignated as Class I any national park or wilderness area established after August 7, 1977.

To date, no state has redesignated as Class I any national park or wilderness area established after August 7, 1977.

In addition to Class I and Class II, the statute envisioned the possibility of redesignating some areas to a less stringently protected Class III, but no state has done so.

Role of Federal Land Managers

Under land management laws such as the National Park System Organic Act and the Wilderness Act, federal land managers (FLMs) are responsible for protecting the air quality for the lands they administer. The CAA also provides FLMs with means and opportunities to protect air quality for the lands they manage.

An FLM is defined in the CAA as the Secretary of the department with authority over the lands in question. In practice, the Secretary has delegated this authority to an air quality branch or to the official charged with direct responsibility for the land in question. The CAA gives the FLMs certain roles and responsibilities in regulatory decisions that might affect air quality in federally protected areas.

All CAA regulatory decisions require public notice of the proposed actions and opportunity for comment. Many CAA provisions also require consultation with FLMs. For example, EPA or the states must consult with FLMs of Class I areas regarding permits for new major sources of air pollution that might degrade the air quality of the areas. FLMs would have the opportunity to demonstrate that the increased pollution would harm the air quality, such as by reducing visibility.

The FLM's role is an advisory one. As noted in a 2010 interagency guidance document known as the FLAG Report, "Although the FLMs have an 'affirmative responsibility' to protect AQRVs [air quality-related values], they have no permitting authority under the CAA, and they have no authority under the CAA to establish air quality-related rules or standards. The FLM role within the regulatory context consists of considering whether emissions from a new source, or emission increases from a modified source, may have an adverse impact on AQRVs and providing comments to permitting authorities (States or EPA)." (See http://www.nature.nps.gov/air/Pubs/pdf/flag/FLAG_2010.pdf.)

The CAA does not specify how close a new major source must be to a Class I area to trigger the consultation requirement. The FLAG Report states, "Generally, the permitting authority should notify the FLM of all new or modified major facilities proposing to locate within 100 km (62 miles) of a Class I area. In addition, the permitting authority should notify the FLM of 'very large sources' with the potential to affect Class I areas proposing to locate at distances greater than 100 km."

The FLM's role in CAA decisions is most explicit for, but is not limited to, Class I areas. FLMs also can be involved in CAA decisions that affect Class II areas, particularly when scenic vistas are a significant value for the areas. According to the FLAG Report, similar criteria apply to Class II areas: "Under the Clean Air Act, the FLM formal 'affirmative responsibility' role in the permitting process is limited to the extent a proposed new or modified source may affect AQRVs in a Class I area.... Nevertheless, the FLMs are also concerned about resources in Class II parks and wilderness areas because they have other mandates to protect those areas as well. The information and procedures outlined in this document are generally applicable to evaluating the effect of new or modified sources on the AQRVs in both Class I and Class II areas."

Besides requiring that major emitting facilities obtain pre-construction PSD permits, the CAA sets a national goal of preventing future impairment of visibility in Class I areas and remedying existing impairment. The states are to develop implementation plans (SIPs) demonstrating reasonable progress toward this regional haze goal at 10-year intervals. On May 4, 2016, EPA proposed revisions to its Regional Haze Rule (81 *Fed. Reg.* 26942) that would strengthen the role of FLMs in the development of these SIPs by requiring states to consult with FLMs earlier in the process of developing the plans.

Additionally, FLMs fulfill their responsibilities for protection of AQRVs by participating in EPA's development of air quality regulations. For example, FLMs may participate in scoping meetings and other public forums as regulations are being developed. They also may support scientific research on the sources and effects of air pollution on federal lands and resources—for example, by conducting projects to monitor AQRVs on federal lands and by participating in interagency research committees.

For Additional Reading

For additional information, see CRS Report RL30853, *Clean Air Act: A Summary of the Act and Its Major Requirements*, by James E. McCarthy and Claudia Copeland.

James E. McCarthy, Specialist in Environmental Policy
Laura B. Comay, Analyst in Natural Resources Policy

IF10496

Disclaimer