

Air Quality Committee Newsletter

Vol. 18, No. 2

July 2015

MESSAGE FROM THE CHAIR

Phillip Bower

As anyone who practices in the area of air quality knows, significant federal Clean Air Act and related federal and state regulatory developments continue to occur at breakneck speed, and it can be challenging to stay abreast of the latest developments. This spring we continue to have court proceedings related to the Cross-State Air Pollution Rule and Mercury and Air Toxic Standards (MATS), the Clean Power Plan, and a host of other air regulations and issues. There are proposed rules and guidance on revised National Ambient Air Quality Standards (NAAQS), the Clean Power Plan, and greenhouse gas (GHG) new source performance standards (NSPS) for utilities, and to address concerns from the U.S. Supreme Court's ruling in the GHG rules case. The AQC is here to help. We act as a forum for information exchange among air quality practitioners and other Section committees. Below are some updates on what the committee has been doing, as well as ways you can get involved. Always feel free to contact me or any of the vice chairs if you have questions or suggestions for something you would like to see the committee address through its programs, publications, or electronic communications.

44th Spring Conference: The ABA Super Conference in Environmental Law

I am writing this column just a few short weeks before the 44th Spring Conference scheduled for

March 25–28 in San Francisco, but by the time the issue is published, the conference will be over. If you attended, hopefully you were able to participate in some of the panels that focused on air or include air-related issues, including a Supreme Court roundup, “The Future of Energy in a Carbon-Constrained World,” “States in the Driver’s Seat Under EPA’s Clean Power Plan,” “EPA Regulation of Conventional Air Pollutants: What Will Keep Lawyers Busy,” “Key Environmental Issues in U.S. EPA, Region 9 (Pacific Southwest),” and some enforcement panels. The Public Service Project was scheduled for March 28 from 9:00 to 12:00 p.m. Participants will join the San Francisco Chapter of the Surfrider Foundation to clean up Baker Beach, an iconic San Francisco landmark located at the foot of the Golden Gate Bridge.

Programs

By the time you read this, the committee will have held a committee call on state perspectives about the proposed ozone NAAQS with input from state regulators around the country. The committee also cosponsored two D.C. Bar programs that were held at the end of March: (1) “MAT’s Up? Perspectives on the Supreme Court Argument in *White Stallion Energy Center v. EPA*”—follow-up to the March 25, 2015, Supreme Court oral argument in *White Stallion Energy Center v. EPA*, a challenge to the EPA’s MATS rule where leading practitioners provided their perspectives on oral

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AMERICAN BAR ASSOCIATION
SECTION OF ENVIRONMENT,
ENERGY, AND RESOURCES

CALENDAR OF SECTION EVENTS

July 14, 2015
How Green is Your Gasoline? An Examination of Recent Developments in EPA's RFS Program
 Primary Sponsor: The District of Columbia Bar

July 31-August 2, 2015
ABA Annual Meeting
 Chicago, IL

August 5-7, 2015
27th Annual Texas Environmental Superconference - "The Greatest Thing Since Sliced Bread" "Cliches - Avoid Them Like the Plague"
 Primary Sponsor: State Bar of Texas, Environmental and Natural Resources Law Section

September 15, 2015
Counseling Farmers & Ranchers, Agri-Businesses and Food Entrepreneurs on Insurance
 Primary Sponsor: Solo, Small Firm, & General Practice Division

October 1-2, 2015
36th Public Land Law Conference. Transcending Boundaries: Achieving Success in Cooperative Management of Natural Resources
 Primary Sponsor: Public Land & Resources Law Review, Univ. of Montana School of Law

October 28-31, 2015
23rd Fall Conference
 Swissotel
 Chicago, IL

For full details, please visit
www.ambar.org/EnvironCalendar

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argument, the various directions the Court might go, and how such decisions might impact future actions by the Environmental Protection Agency; and (2) “Measuring the Social Cost of Carbon: The Promise and Pitfalls of Using the SCC to Justify Regulation”—a panel of experts offered a primer on the social cost of carbon tool and debated the advantages and shortcomings of relying on it as a factor in agency decision making. We are also working with the Air and Waste Management Association to discuss co-sponsorship of air programs.

Tips for Ways to Become Involved (or How to Become a Committee Vice Chair or Chair)

Each year in the late spring, Section committees select vice chairs for the upcoming ABA year through a self-nomination process (watch the listserv for more information later this spring). The Air Quality Committee typically receives more nominations than available vice chair positions. If you are interested in serving as a vice chair in the future, or just want to get more involved, here are some good tips on how to get involved and to meet Section and committee leadership (thanks to Gale Lea Rubrecht for some of these great ideas):

Tip #1: share information. If you are aware of a new air quality guidance document, letter, case, law, or regulatory or technical development, share it with me or any of the committee vice chairs with communication responsibilities (Michael Balster, Cheri Budzynski, Randy Dann, Jacob Santini, and Gary Steinbauer) so that we might communicate these developments with the full membership via the listserv, committee website, social media, and/or committee newsletter. We especially like to circulate documents that otherwise may not be readily available to practitioners across the country (e.g., briefs, guidance memos, etc.).

Tip #2: participate online. The committee has excellent electronic resources for its members to use. Join our Air Quality subgroup on LinkedIn and engage in discussions and exchange information on air quality issues with committee members using LinkedIn and Twitter. If you do not know how to “tweet” or how to join LinkedIn or a LinkedIn subgroup, our committee vice chair for Social Media, Cheri Budzynski, can walk you through the steps. You can also send links to air-related client alerts or newsletters to Michael Balster, and he can post a link on our website.

Tip #3: write. Writing opportunities abound, and not all the opportunities require a law review article. For example, newsletter articles can be a paragraph about something of interest happening in your state or a matter you are working on. Offer to write a guest article for our committee newsletter by contacting Randy Dann, Jacob Santini, or Gary Steinbauer, our committee newsletter vice chairs. Become a contributing author for the Section’s *Year in Review* by contacting committee vice chairs Jonathan Martel or Zachary Fayne. Submit an article proposal to *Trends, Natural Resources & Environment*, or a Section book or other publication.

Tip #4: participate in Section and committee public service projects. Sign up for the Section public service projects at the various conferences. This is a great way to meet other Section members in a casual setting. We also are looking for ways to expand the public service section of our website and suggestions for other committee public service projects.

Tip #5: volunteer to help organize a committee dinner during a Section conference or attend the dinners. Are you attending one of the Section conferences? We usually have a committee dinner at the conferences and can always use help in coordinating a location and the RSVP list.

Tip #6: recommend a program idea and help to locate speakers. The committee can host two free committee conference calls per year and can also

cosponsor calls with other committees. We can also hold a webinar if we have enough lead time and the topic is right. If you would like to suggest topics for a webinar or committee call or to help organize one, please contact committee vice chairs for programs, Shannon Broome, Scott Turner, Gary Pasheilich, or Elizabeth Hurst.

Changing Jobs? Promoted? Let the Section Know!

When you start a new job or position or receive prestigious promotions or appointments, please let the Section know by contacting Ellen Rothstein, the Section's publications manager, at Ellen.Rothstein@americanbar.org with the news. Your information will appear in *People on the Move* for the ABA SEER *E-News* e-mail, the *Trends* electronic newsletter, and *Section Member Update*.

Upcoming Programs and Events

The 24th Fall Conference will be held at the Swissotel in Chicago, a little bit later in the year than usual, from Oct. 28 to 31, 2015. Planning for this conference is getting under way, and the committee has submitted a number of air topics for panels. If you have connections in Chicago that might provide unique opportunities for public service projects, tours, events, or excursions for conference attendees, please let me know. You might also need to bring a Halloween costume!

Feel free to send comments or ideas for the committee to me. On behalf of the AQC leadership team, thank you for your membership.

Phillip Bower is the chair of the Air Quality Committee.

AMERICAN BAR ASSOCIATION SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

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- Network with committee leaders and members
- Communicate with fellow committee members via list serves and social media outlets
- Gain opportunities for leadership in the committee and in our Section
- Learn about opportunities to publish articles and propose program ideas
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THE PORTS OF LOS ANGELES AND LONG BEACH BACKSTOP RULE: AN INDIRECT WAY FOR STATES TO MAKE POLLUTERS LIVE UP TO THEIR COMMITMENTS

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The largest single fixed source of air pollutants in the Southern California region,¹ the combined ports of Los Angeles and Long Beach (“ports”), has been the subject of intense scrutiny throughout the Southern California region for many years due to the ports’ regionwide and local air pollution, transportation, and health impacts. Residents of the area surrounding the ports suffer disproportionately high health risks due to exposure to pollution from the ports, including cancer.²

The largest container ports in the United States, the ports accommodate more than a quarter of the container vessel traffic on the west coast of the United States and a fifth of all container traffic in the United States.³ Handling most of the container traffic between the United States and Pacific Rim, the ports are facing pressure to expand their facilities in response to economic growth in Pacific Rim countries over the past few years.

Community opposition to expansion plans at the ports resulted in ports voluntarily adopting the San Pedro Bay Ports Clean Air Action Plan (Clean Air Action Plan or CAAP) in 2006, pledging to reduce air pollutant emissions related to activities at the ports by approximately 75 percent.

However, recently the South Coast Air Quality Management District (SCAQMD) has proposed to make the emission reductions under the CAAP mandatory through Proposed Rule 4001—Maintenance of AQMP Emission Reduction Targets at Commercial Marine Port (“backstop rule”).

Popularly known as the “backstop rule,” the rule has met significant opposition from industry and the ports while receiving strong support from

community and environmental groups. Industry and the ports argue that the backstop rule is unnecessary, as significant emission reductions have already been achieved voluntarily through the CAAP. Meanwhile, SCAQMD, community groups, and environmentalists contend that the backstop rule is necessary to ensure that the ports will meet its emission reduction targets as it goes forward with expansion projects and integrate the CAAP’s emission reductions into the state implementation plan.

The backstop rule is designed to “provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available.”⁴

The backstop rule relies upon a seldom used authority under the Federal Clean Air Act known as “Indirect Source Review.” Indirect Source Review (ISR) provides states with the authority to regulate facilities or structures that attract or generate large amounts of mobile source pollutants such as the ports.

ISR provides states with the ability to regulate mobile sources of air pollutants, an area generally regulated only by the federal government. ISR cures a large hole in local air pollution planning that generally focuses on regulating stationary sources of air pollutants such as factories and power plants.

The backstop rule sets an important precedent for the state of California that will allow the state to begin controlling air pollution from other types of major transportation infrastructure facilities that are largely federally preempted from state laws and regulations, such as airports and rail yards.

The fact that the largest fixed source of air pollutants in the Southern California region, the ports, is largely exempt from local air pollution regulations due to federal preemption begs for this kind of creative solution to integrate the ports’ pollution planning with the state’s air pollution regulations.

I. The Backstop Rule

The backstop rule addresses the ports' emissions of nitrogen oxides, fine particulate matter, and sulfur dioxide. The backstop rule requires that the ports annually report emissions from port-related sources.⁵ Port-related sources mean "on- and off-road mobile sources operating at, and to and from the Ports, . . . [including] ocean-going vessels, locomotives, heavy-duty trucks, harbor craft, and cargo handling equipment. . . ."⁶ If the ports' annual report indicates that emissions from port-related sources are exceeding the emission reduction targets, the ports are required to prepare an emission reduction plan.⁷ The emission reduction plan is required to at a minimum demonstrate that the port will attain the emission reduction targets.⁸ If the emission reduction plan cannot demonstrate that the port will attain the emission reduction target, the ports are required to implement *all feasible control strategies* that can be implemented within 18 but no later than 30 months.⁹ Both the ports and SCAQMD are required to allow public notice and comment on the proposed emission reduction plan.¹⁰ SCAQMD can opt to approve the emission reduction plan in whole, in part, or reject the emission reduction plan in its entirety.¹¹

II. History

The port backstop rule is the latest twist to a saga prompted by community outrage over expansion at the ports. Facing community opposition to expansion plans at the ports, the ports approved the Clean Air Action Plan on November 20, 2006, committing to reduce emissions from port operations in future years.¹²

The Clean Air Action Plan committed to reduce particulate matter, nitrous oxide, and sulfur oxide emissions by approximately 75 percent overall, proposing to achieve a 72 percent reduction in diesel particulate matter emissions, 22 percent reduction in nitrous oxide emissions, and 93 percent reduction in sulfur oxide emissions by 2014.¹³ Moreover, the ports committed to achieving additional reductions in emissions by

2020, pledging to achieve a 77 percent in diesel particulate matter emissions, 59 percent reduction in nitrous oxide emissions, and 93 percent reduction in sulfur oxide emissions.¹⁴ Finally, the ports proposed to adopt a health-based risk reduction standard, proposing to reduce population-weighted cancer risk due to ports-related diesel particulate matter emissions by 85 percent by 2020.¹⁵

The Clean Air Action Plan proposes to accomplish these emission reductions by requiring the use of low emission heavy-duty vehicles, cargo handling equipment, harbor craft, and locomotives. Moreover, the ports are mandating a number of operational changes for ocean-going vessels utilizing the ports, requiring ocean-going vessels to utilize lower vessel speeds, low-sulfur fuel, and air pollutant control devices when operating in and around the ports. Finally, the ports also proposed implementing shore power at major terminals, relieving docked ships from having to run their engines to maintain their support systems when in port.

Given the ports' lack of legal authority to mandate most of these changes, the ports have opted to implement these measures voluntarily through their private proprietary authority as owner of the ports through lease requirements, tariff changes, targeted incentives, and California Environmental Quality Act (CEQA) mitigation measures.¹⁶

In 2010, the ports found that they had already met their 2014 nitrous oxide emission reduction target and projected that they would meet their diesel particulate matter and sulfur dioxide emission reduction targets.¹⁷ The ports have yet to report whether they successfully met the 2014 targets.

The voluntary approach has been largely successful, but has faced some setbacks in recent years. Most recently in 2013 part of the Clean Air Action Plan was struck down by the U.S. Supreme Court in *American Trucks Association v. City of Los Angeles*.¹⁸ The Court struck down Clean Air Action Plan requirements that trucks entering the

ports display designated placards in order to enter the ports as well as develop an off-street parking plan. The Court found that those requirements were federally preempted under the Federal Aviation Administration Authorization Act, which bars states or local governments from enacting a “law, regulation, or other provision having the *force and effect of law* related to a price, route or service of any motor carrier.”¹⁹

While the provisions were relatively minor, the Court’s decision makes it more difficult for the ports to effectively enforce Clean Air Action Plan emission requirements. In particular, the Court found that while those requirements could certainly be included as part of a contract agreement between trucking companies and the ports, the Court found that the ports had gone beyond their authority and had acted with the “force and effect of law” by folding these requirements into their port tariff, a violation of which is punishable as a criminal misdemeanor with penalties of up to six months in prison.²⁰ While a setback, the Court’s ruling left most of the Clean Air Action Plan intact and left the ports’ non-criminal enforcement measures intact.

Facing public and legal pressure to integrate the Clean Air Action Plan’s emission reductions into the state implementation plan, SCAQMD proposed the backstop rule in its 2012 Air Quality Management Plan (2012 AQMP).²¹ SCAQMD then voted to move forward with developing the backstop rule on February 1, 2013.²²

Since the backstop rule was adopted into the 2012 AQMP, SCAQMD has moved forward with efforts to finalize the backstop rule, last taking comments on the backstop rule’s preliminary CEQA environmental documents in January 2014.²³

III. Clean Air Act Indirect Source Review Authority

States and the federal government may regulate air pollution emissions from transportation infrastructure such as ports, airports, rail yards,

and highways under the Clean Air Act’s Indirect Source Review authority. ISR allows the federal government and states to promulgate regulations to ensure that “new or modified indirect source will not attract mobile sources of air pollution . . . which would cause or contribute to air pollution concentrations [exceeding or preventing maintenance with any national ambient air quality standard].” 42 U.S.C. § 7410(a)(5)(D); *see also* 42 U.S.C. § 7410(c). Indirect sources can include any “facility, building, structure, installation, real property, road, or highway which attracts or may attract mobile sources of pollution. . . .” 42 U.S.C. § 7410(a)(5)(C).

Indirect Source Review is a critical piece for local air pollution planning. While states may regulate stationary sources of air pollutants under their CAA state implementation plans (SIP), states, with the exception of the state of California, may not promulgate emission standards for mobile sources of pollution such as cars, trains, and ships, which are subject to national mobile standards. However, emissions from mobile sources are a significant source, if not the primary source, of air pollutants in many areas.

Courts have found that emissions from mobile sources cannot be attributed to stationary sources. For example, in *South Terminal v. Environmental Protection Agency*,²⁴ the court found that parking structures are not a stationary source under the CAA since parking structures “emit no pollutants, but instead only attract vehicles which emit pollution. . . .”²⁵

Facilities may be regulated both as stationary and indirect sources of air pollutants. Indirect sources of air pollutants, such as bus terminals, airports, rail yards, and ports, often have stationary sources of air pollution within their facility, such as backup power generators, which requires a facility to be regulated both as a stationary and indirect source of pollution. Courts have found that facilities may be regulated as both a stationary and indirect source of air pollutants.²⁶

IV. Federal Conformity

Major transportation projects, such as airports, public transit, highway, and port expansions, often require federal funding and approval that triggers CAA conformity requirements. Section 176 of the CAA, 42 U.S.C. § 7506, requires that no federal agency “engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a[] [Federal or State CAA] implementation plan.” Conformity with a federal or state implementation plan requires that a project demonstrate that it will not cause or contribute to new violations of, increase the frequency or severity of any existing violation of, or delay timely attainment of any application air quality standard. 42 U.S.C. § 7506(c)(1)(A-B).

As a result, major transportation projects such as airport, freeway, and port expansions often are subject to federal conformity requirements and required to develop emissions inventories to demonstrate that the project will not cause or contribute to violations of national ambient air quality standards. Indirect Source Review can serve as a means to ensure that these transportation projects continue to meet their original projections once they are in operation.

V. Conclusion

The backstop rule provides an effective means by which SCAQMD can enforce emission targets that were already previously agreed to by the ports in the Clean Air Action Plan. Prior to the finalization of the ports’ backstop rule, SCAQMD has no means by which to enforce emission targets against the ports. Regardless of whether or not it appears that a particular source is meeting its previous projections, the ability to enforce emission reduction commitments on indirect sources of air pollutants is essential to allow states to maintain or come into compliance with federal air quality standards.

Moreover, the backstop rule adopts a flexible approach that effectively avoids harmonization

issues between the Clean Air Act and other federal statutes. The backstop rule infringes upon neither federally set mobile emissions standards (or in California’s case only state-level emission standards) nor federal operational standards for ports. The backstop rule merely regulates the *total* air pollutant emissions that can be emitted by port operations and allows the ports to determine exactly how to reach those targets.

The backstop rule is an example of the kind of essential regulation that should be adopted for other transportation projects under the state’s Indirect Source Review authority. Without it, air pollutant emissions from transportation infrastructure are completely unregulated. Commitments made on the part of state governments concerning transportation infrastructure are completely unenforceable without an Indirect Source Review rule to monitor the amount of emissions arising from transportation infrastructure.

Endnotes

1 South Coast Air Quality Management District, Final 2012 Air Quality Management Plan App. IV-A IND-01: Backstop Measure for Indirect Sources of Emissions from Ports and Port Related Facilities [NO_x, SO_x, PM2.5] (2013) (“Final 2012 Air Quality Management Plan App. IV-A”).

2 Tony Barboza, *Cancer Risk from Air Pollution Drops in Southern California*, L.A. TIMES, Oct. 2, 2014.

3 Port of Long Beach, Facts at a Glance, <http://www.polb.com/about/facts.asp> (last visited Mar. 9, 2015).

4 Final 2012 Air Quality Management Plan App. IV-A at 3.

5 South Coast Air Quality Management District, Preliminary Draft Staff Report: Proposed Rule 4001—Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports App. A Proposed Rule 4001–4001-2 (2013).

6 *Id.*

7 *Id.* at 4001-2–4001-3.

8 *Id.* at 4001-4.

9 *Id.*

10 *Id.* at 4001-5.

11 *Id.*
12 Port of Los Angeles & The Port of Long Beach, Final 2006 San Pedro Bay Ports Clean Air Action Plan Overview 2 (2006) (“CAAP”).
13 Port of Los Angeles & The Port of Long Beach, San Pedro Bay Ports Clean Air Action Plan 2010 Update ES-3 (“2010 CAAP Update”); see also Clean Air Action Plan at 20 (“The Ports . . . anticipate . . . developing overall San Pedro Bay emission targets for NO_x, SO_x and PM, with targets and milestones for 2014 and 2020.”).
14 2010 CAAP Update at ES-3.
15 *Id.*
16 CAAP at 23.
17 2010 CAAP Update at ES-8–ES-11.
18 133 S. Ct. 2096 (2013).
19 49 U.S.C. § 14501(c).
20 *American Trucks Association*, 133 S. Ct. at 2103.
21 South Coast Air Quality Management District, Final 2012 Air Quality Management Plan App. IV-A IND-01: Backstop Measure for Indirect Sources of Emissions from Ports and Port Related Facilities [NO_x, SO_x, PM2.5] (2013).
22 South Coast Air Quality Management District Governing Board, Minutes of the February 1, 2013 Board Meeting (2013).

23 South Coast Air Quality Management District, Notice of Public Workshop and CEQA Scoping Meeting Proposed Rule 4001—Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports (2013).
24 504 F.2d 646 (1st Cir. 1974).
25 *South Terminal v. Env’tl Protection Agency*, 504 F.2d 646, 668 n.24. However, in *California v. Navy*, the court found that aircraft engine test cells could be regulated as stationary sources under the Clean Air Act because test cells, unlike parking structures or aircraft hangers, do not attract vehicles or other moving sources of pollution. 431 F. Supp. 1271, 1281–82 (N.D. Cal. 1977).
26 In *Sierra Club v. Larson*, the court found that facilities such as parking structures and aircraft hangers may be regulated both as a stationary and as an indirect source under the Clean Air Act. 2 F.3d 462, 468 (1st Cir. 1993) (“The difficulty is that Congress might not have minded two layers of control, and contrivances like the ‘indirect source’ provision in Title I blur the notion that auto pollution is exclusively a Title II problem.”).

Registration is now open!

Environmental, Energy, and Resources Law

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OCTOBER 28-31, 2015

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Climate Change: On November 4, 2014, the Environmental Protection Agency (EPA) published a supplemental proposal to the Clean Power Plan to limit carbon emissions from existing power plants in Indian Country and U.S. Territories (*Carbon Pollution Emission Guidelines for Existing Stationary Sources: EGUs in Indian Country and U.S. Territories; Multi-Jurisdiction Partnerships*, 79 Fed. Reg. 65,482). Like the Clean Power proposal for states, this supplemental proposal sets area-specific goals for Indian Country and territories and provides options for meeting those goals in a flexible manner that accommodates a diverse range of approaches. Applying the same building blocks as the Clean Power Plan proposal for existing units, the supplemental proposal has two main elements: (1) emission rate-based goals specific to each area of Indian Country and U.S. Territories that have affected electric generating units; and (2) guidelines for the development, submission, and implementation of plans to achieve the goals. For Indian Country, EPA is proposing goals for affected power plants within the Navajo Nation, the Ute Tribe of the Uintah and Ouray Reservation, and the Fort Mojave Tribe. For U.S. Territories, EPA is proposing goals for Puerto Rico and Guam only.

On January 7, 2015, EPA announced that it will finalize the proposed Clean Power Plan by mid-summer 2015, and announced upcoming milestones. EPA also began the regulatory process for proposing a federal plan. Previous milestones for the Clean Power Plan include the proposal for standards for carbon emissions from new power plants, published January 8, 2014 (*Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 1430), and proposed standards for modified and reconstructed

units and existing units published June 18, 2014 (*Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,960; *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830).

EPA has announced a general timeline for the Clean Power Plan rule finalization and compliance schedule. Important milestones include issuance of final rules for existing, new, modified, and reconstructed power plants in states, Indian Country, and U.S. Territories in summer 2015. EPA also plans to propose a federal plan for meeting Clean Power Plan goals in summer of this year. EPA also proposed a summer 2016 due date for states to submit compliance plans to EPA, and proposes that these plans can be complete plans or initial plans with requests for 1- or 2-year extensions. Summer 2016 also is the projected time frame for EPA to issue a final federal plan for areas that do not submit plans. Summer 2017 is the proposed due date for compliance plans that are granted a 1-year extension, and summer 2018 is the proposed due date for multistate compliance plans granted a 2-year extension. EPA has proposed summer 2020 as the beginning of the Clean Power Plan compliance period.

On February 19, 2015, the Federal Energy Regulatory Commission (FERC) convened the first of four technical conferences on the impacts of EPA's proposed Clean Power Plan on electric reliability, wholesale electric markets and operations, and energy infrastructure. This national overview technical conference was followed by three regional conferences on the following dates: Western Region, February 25, 2015, Denver, Colo.; Eastern Region, March 11, 2015, Washington, D.C.; Central Region, March 31, 2015, St. Louis, Mo. Unlike the opening conference, the regional conferences were staff led with optional participation from commissioners. General themes raised included the level of FERC involvement, issues regarding electric reliability considerations and interim deadlines, and infrastructure concerns.

Budget: On February 2, 2015, the White House released its proposed fiscal year 2016 budget (FY 2016) for EPA. The proposed budget provides \$8.6 billion (with \$481 million above EPA’s enacted FY 2015 budget) to support EPA’s core programs and each of the agency’s five goals. The five goals are (1) addressing climate change and improving air quality; (2) protecting America’s waters; (3) cleaning up communities and advancing sustainable development, protecting disproportionately impacted low-income and minority communities and preventing releases of harmful substances; (4) ensuring the safety of chemicals and preventing pollution; and (5) protecting human health and the environment by enforcing laws and assuring compliance.

For FY 2016 in regards to goal 1, addressing climate change and improving air quality, EPA will focus on the following objectives: (1) addressing climate change; (2) improving air quality; (3) restoring and protecting the ozone layer; and (4) minimizing exposure to radiation. In addressing climate change, EPA will focus on: Working with states to implement the Clean Power Plan carbon dioxide emission standards for existing power plants.

Finalizing a second phase of heavy-duty vehicle greenhouse gas regulations that incorporate a wider range of advanced technologies and exploring options to reduce emissions from a wide range of nonroad equipment, locomotives, aircraft, and transportation fuels.

Prioritizing and reviewing low global warming potential (GWP) options for use in consumer and industrial use sectors under the Significant New Alternatives Policy (SNAP) program.

- Working with stakeholders on measures that will reduce emissions of GHG from the oil and gas production industry.
- Supporting reporting and verification in the Greenhouse Gas Reporting Program of emissions across 41 industry sectors and emission sources and approximately 8000 reporters.
- Leading the Global Methane Initiative

(GMI) and enhancing public-private sector cooperation to reduce global methane emissions and deliver clean energy to markets.

- Implementing the ENERGY STAR program and other GHG reduction partnership programs across the residential, commercial, industrial, and transportation sectors.
- Overseeing compliance with the revised vehicle fuel economy labeling requirements, which provide consumers with GHG as well as fuel economy information.
- Continuing to implement the new Renewable Fuel Standards (RFS2) program and carrying out other actions required by the Energy Policy Act (EPA) of 2005 and the Energy Independence and Security Act (EISA) of 2007.
- Supporting implementation and compliance with GHG emission standards for light-duty and heavy-duty vehicles and the National Highway and Transportation Safety Administration’s (NHTSA) Corporate Average Fuel Economy (CAFE) standards.

EPA, *FY 2016—EPA Budget in Brief* at 19 (Feb. 2015) (*Budget in Brief*). The proposed budget also includes a \$4 billion “Clean Power State Incentive Fund” to support states that choose to go beyond the Clean Power Plan. *See Budget in Brief* at 17.

National Ambient Air Quality Standard

(NAAQS) for Ozone: On December 17, 2014, EPA proposed to lower the 8-hour ozone standard to within a range of 0.065 to 0.070 parts per million (ppm) following its latest review of health studies and input from the Clean Air Science Advisory Committee (CASAC). *Proposed Rule: National Ambient Air Quality Standards for Ozone*, 79 Fed. Reg. 75,234. EPA last updated the ozone standard in 2008 when the 8-hour primary standard was set at 0.075 ppm with the secondary standard set at the same level. EPA plans to issue the final ozone standard by October 1, 2015, a court-ordered deadline. The proposal allows for a 90-day comment period, with comments due March 17, 2015.

In addition, EPA is proposing to lower the secondary standard to the same 0.065 to 0.070 ppm range to reduce damage from ground-level ozone. In establishing the secondary standard, EPA would define the necessary protection in terms of a W126 index in a range of 13 to 17 ppm-hours averaged over three years. The W126 index is a seasonal index used to assess the impact of ozone on ecosystems and vegetation. The agency's analysis to support the proposal indicates that the standard of 0.065 to 0.070 ppm is equivalent to the W126 index of 13 to 17 ppm-hours and is therefore sufficient to provide the protection necessary.

On February 13, 2015, Administrator McCarthy signed a notice to submit a final rule for publication in the *Federal Register: Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements*. This final rule will implement the 2008 ozone NAAQS that were promulgated on March 12, 2008. The rule addresses a range of nonattainment area state implementation plan (SIP) requirements, including those pertaining to attainment demonstrations, reasonable further progress, reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that will apply when the 1997 ozone NAAQS are fully revoked. EPA commented that it expects this rule will help facilitate implementation of any new standards if the primary or secondary ozone NAAQS are revised in the future (in reference to the proposal to lower the standards to 0.065 to 0.070 ppm).

Use of Next Generation Compliance Tools:

On January 7, 2015, Cynthia Giles, assistant administrator for EPA's Office of Enforcement and Compliance Assurance, issued a memorandum requiring consideration of Next Generation (Next Gen) compliance tools in all cases other than expedited settlements. Next Gen compliance tools are to be incorporated into civil judicial and

administrative settlements whenever appropriate. EPA has stated that the use of these tools in settlement is intended to enhance compliance with settlement provisions and environmental requirements by helping regulated entities more easily identify, address, and report environmental compliance and compliance problems and by facilitating review and analysis by EPA and the public of meaningful environmental compliance information. Next Gen compliance tools are defined as incorporating one or more of three key features: (1) new: use of a practice or requirement not yet commonly included in most settlements; (2) technology: use of modern information technology and/or advanced technology so that information about pollutant releases and their qualitative levels is available closer to real time, is more accessible, and is more complete; and (3) minimal agency burden: use of approaches to provide an effective structure for the settling party to comply with settlement requirements without increasing EPA's oversight burden.

Next Gen tools fall within four general categories: (1) advanced monitoring; (2) independent third-party verification of a settling party's compliance with a settlement; (3) electronic reporting; and (4) public accountability through increased transparency of compliance data. Specific examples of Next Gen compliance tools include infrared cameras, fence line monitoring, community monitoring, automated leak detection, solar-powered buoys, real-time data reporting, public posting of environmental monitoring data, Internet posting, electronic reporting, automatic public warnings tied to monitoring stations, environmental condition information available via mobile applications, third-party compliance audits, and required public consultation. EPA noted that some tools are particularly effective when used in tandem, such as when fence line monitoring is used in conjunction with public transparency of environmental data.

EPA REGIONAL REPORTS

EPA REGION 1

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RGGI

The 26th RGGI auction of carbon dioxide allowances was held on December 5, 2014. All allowances offered for sale by the nine RGGI states were sold at an auction clearing price of \$5.21 per allowance. Click http://www.rggi.org/docs/Auctions/26/PR120514_Auction26.pdf for link to News Release.

Connecticut

EPA approved Connecticut's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting. Click <http://www.gpo.gov/fdsys/pkg/FR-2014-11-17/pdf/2014-27118.pdf> for link to *Federal Register* notice.

Maine

EPA approved four state implementation plan (SIP) revisions submitted by the state. These revisions establish reasonably available control technology (RACT) for two categories of volatile organic compound (VOC) sources and revise two existing VOC RACT regulations previously approved into Maine's SIP. Click <http://www.gpo.gov/fdsys/pkg/FR-2014-11-05/pdf/2014-26174.pdf> for link to *Federal Register* notice.

EPA extended the Clean Air Act's prohibition against the sale of conventional gasoline in reformulated gasoline (RFG) areas to the southern Maine counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln. This action is based on a request from the governor. Click <http://www.gpo.gov/fdsys/pkg/FR-2015-02-06/pdf/2015-02185.pdf> for link to *Federal Register* notice.

The Department of Environmental Protection proposed to delay implementation of California's aftermarket catalytic converter requirements for three years to June 1, 2018. The delay is being proposed to allow more time for small manufacturers to comply and for other states in the region to adopt these requirements. Click <http://www.maine.gov/tools/whatsnew/attach.php?id=635480&an=1> for link to draft notice.

Massachusetts

The Department of Environmental Protection (MassDEP) assessed a \$16,137 penalty on a New Hampshire asbestos abatement contractor for violations involving removal of asbestos-containing transite siding from a garage at a residence. Click [here](#) for link to News Release.

MassDEP has proposed a Clean Energy Standard at 310 C.M.R. 7.75 that is intended to increase the amount of clean energy used to generate electricity consumed in Massachusetts. The standard would apply to retail electricity sellers beginning in 2020 and include requirements for minimum percentage of electrical energy sales with clean energy attributes. Click <http://www.mass.gov/eea/docs/dep/air/laws/ces-dreg.pdf> for link to proposed rule.

MassDEP recently promulgated a new section in 310 C.M.R. 60.00, which will be titled "Global Warming Solutions Act Requirements for the Transportation Sector and the Massachusetts Department of Transportation." Among other things, this new rule establishes a requirement that the metropolitan planning organizations in Massachusetts evaluate and track the GHG emissions and certain select transportation improvement programs. Click <http://www.mass.gov/eea/docs/dep/air/laws/greendot-fs.pdf> for link to fact sheet.

New Hampshire

The N.H. Department of Environmental Services (NHDES) has eliminated the annual reporting requirement for emergency generators subject

to the general state permit and changed the fee payment schedule from annual to every five years. Click http://des.nh.gov/organization/divisions/air/pehb/apps/permit_air_emissions_gsp_eg.htm for further information.

NHDES declared January 14–January 15, 2015 as “Air Quality Action Days” and advised sensitive individuals in populated valley areas in the southwestern part of the state to avoid strenuous exercise. The declaration was based on predicted elevated fine particulate matter concentrations primarily due to residential wood-burning fireplaces, stoves, and boilers. Click <http://des.nh.gov/media/pr/2015/20150114-air-quality.htm> for link to Press Release.

EPA proposed to approve a SIP revision intended to ensure that the state Prevention of Significant Deterioration program is consistent with the Final New Source Review (NSR) Improvement Rule issued on December 31, 2002; the Final Rule Governing the Implementation of NSR for Fine Particulate Matter issued on May 16, 2008; and the Final Rule to Establish Increments, Significant Impact Levels (SILs), and a Significant Monitoring Concentration (SMC) issued on October 20, 2010. Click <http://www.gpo.gov/fdsys/pkg/FR-2015-01-21/pdf/2015-00872.pdf> for link to *Federal Register* notice.

NHDES has requested comments on potential amendments to its rules related to the NOx

Budget Trading Program. While no changes to the ozone cap level are being proposed, DES is considering an amendment that would introduce a “flow control” multiplier of 4x to apply to the use of any banked allowances. DES is also seeking comments on a potential amendment that would change the allowance allocations by (1) decreasing the amount allocated to affected facilities; (2) increasing the amount allocated to the set-aside; and (3) introducing a 30:1 multiplier to increase the portion of set-aside allowances that are awarded to renewable energy and non-emitting generating system project sponsors.

Vermont

The Vermont Department of Environmental Conservation issued *Performance Measures for Fiscal Year 2016 Report to the Legislature*. The report includes a summary of reductions of emissions of criteria pollutants, greenhouse gases, and hazardous air pollutants. Click http://www.anr.state.vt.us/dec/co/documents/DEC_FY16_PerformanceMeasures.pdf for link to report.

The Vermont Agency of Natural Resources approved amendments to its regulations that clarify requirements in the existing stage I vapor recovery regulation, effective December 29, 2014. Click <http://www.anr.state.vt.us/air/html/proposedamendments.htm> for further information.



EPA REGION 3

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District of Columbia

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Preconstruction Requirements—Nonattainment New Source Review—80 Fed. Reg. 14,310 (Final Rule). EPA is approving a SIP revision submitted by the District Department of the Environment for the District of Columbia on April 5, 2013. EPA is approving this revision to D.C.'s nonattainment New Source Review program in accordance with the requirements of the CAA. This rule becomes effective on April 20, 2015.

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2008 Ozone, 2010 Nitrogen Dioxide, and 2010 Sulfur Dioxide National Ambient Air Quality Standards; Approval of Air Pollution Emergency Episode Plan—80 Fed. Reg. 2865 (Proposed Rule). EPA is proposing to approve portions of three SIP revision submittals from the District of Columbia. The District made three separate submittals addressing the infrastructure requirements for the 2008 ozone NAAQS, the 2010 NO₂ NAAQS, and the 2010 SO₂ NAAQS. One of the infrastructure submittals also includes the "Revised Air Quality Emergency Plan for the District of Columbia" for satisfying EPA's requirements for air quality emergency episodes. In this rulemaking action, EPA is proposing to approve, in accordance with the requirements of the CAA, the three infrastructure SIP submissions, with the exception of the portions of the submittals addressing transport of pollution and the portions of the submittals addressing the Prevention of Significant Deterioration permitting requirements; and the District's Air Quality Emergency Plan, which also meets EPA's requirements for air pollution prevention contingency plans. The public comment period ended on February 20, 2015.

Maryland

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Determination of Attainment of the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Baltimore, Maryland Moderate Nonattainment—80 Fed. Reg. 14,041 (Proposed Rule). EPA is proposing to make a determination that the Baltimore, Maryland Moderate Nonattainment Area has attained the 2008 8-hour ozone NAAQS. This proposed determination is based upon complete, quality-assured, and certified ambient air monitoring data that show the area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012–2014 monitoring period. If this proposal becomes final, the requirement for this area to submit an attainment demonstration, reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures related to attainment of the 2008 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 2008 8-hour ozone NAAQS. This action does not constitute a redesignation to attainment. The Baltimore area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA determines that the Baltimore area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan. The public comment period ended on April 17, 2015.

Pennsylvania

Citizens for Pennsylvania's Future v. Ultra Resources Inc., Case No. 4:11-cv-01360 (M.D. Pa.). A Pennsylvania federal judge issued a ruling on February 23, 2015, that a series of eight separate natural gas compressor stations operated by Ultra Resources, Inc., within a roughly five-square-mile area in Tioga and Potter Counties, should not be considered a single major source of air pollution requiring a single permit based on their collective emissions. The court rejected arguments from Citizens for Pennsylvania's Future that the facilities should have been considered adjacent. The opinion noted that the issue of adjacency as applied to

fracking-related facilities had not previously been addressed by the Third Circuit or any of the district courts within it. Without Third Circuit precedent, the court relied on the Sixth Circuit's decision in *Summit Petroleum v. EPA* and Pennsylvania Department of Environmental Protection guidance in trying to determine whether Ultra's compressor stations should be considered adjacent. In *Summit Petroleum*, the Sixth Circuit relied on the plain meaning of "adjacent" and found that it would be inappropriate to extend that meaning to include functional interrelatedness.

Clean Air Act Title V Operating Permit Program Revision; Pennsylvania—80 Fed. Reg. 14,037 (Proposed Rule). EPA is proposing to approve a revision to the Pennsylvania Title V Operating Permit Program submitted by the state on February 11, 2014. The Pennsylvania Operating Permit Program is implemented through its Title V Operating Permits Rule, codified at subchapter G of chapter 127 of title 25 of the Pennsylvania Code. The February 11, 2014, revision amends the title V fee program that funds the Pennsylvania Title V Operating Permit Program. These changes resulted in substantial revisions to Pennsylvania's Title V Operating Permit Program. EPA is proposing to approve these revisions. The intended effect of this action is to improve the Commonwealth's Title V Operating Permit Program. The public comment period ended on April 17, 2015.

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Update of the Motor Vehicle Emissions Budgets and General Conformity Budgets for the Scranton/Wilkes-Barre 1997 8-Hour Ozone National Ambient Air Quality Standard Maintenance Area—80 Fed. Reg. 12,604 (Proposed Rule). EPA is proposing to approve SIP revisions submitted by Pennsylvania. These revisions consist of an update to the motor vehicle emissions budgets (MVEBs) for NO_x for the 1997 8-hour ozone NAAQS maintenance SIP for the Scranton/Wilkes-Barre 1997 8-hour ozone NAAQS maintenance area. These SIP revisions also include general conformity budgets for the construction of the Bell Bend Nuclear Power Plant. In addition,

these SIP revisions include updated point and area source inventories for NO_x. This rulemaking action proposes to approve the general conformity budgets, the updated MVEBs, and updates to the point and area source inventories, and thereby make them available for transportation conformity purposes, in accordance with the requirements of the CAA. The public comment period ended on April 9, 2015.

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to Allegheny County Regulations for Establishing Permit Fees—80 Fed. Reg. 12,374 (Proposed Rule). EPA is proposing to approve a SIP revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on August 30, 2010. This revision pertains to the air pollution control portion of the Allegheny County Health Department Rules and Regulations, and consists of changes to the regulations establishing installation permit application and administration fees, as well as open burning permit application fees. The public comment period ended on April 8, 2015.

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request and Associated Maintenance Plan for the Reading, Pennsylvania Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard, and 2007 Base Year Inventory—80 Fed. Reg. 11,580 (Final Rule). EPA approved Pennsylvania's request to redesignate to attainment the Reading, Pennsylvania, nonattainment area for the 1997 annual PM_{2.5} NAAQS. EPA has determined that the Reading area attained the standard and that it continues to attain the standard. In addition, EPA is approving, as a revision to the Pennsylvania SIP, the Reading area maintenance plan to show maintenance of the 1997 annual PM_{2.5} NAAQS through 2025 for the area. The maintenance plan includes the 2017 and 2025 PM_{2.5} and NO_x mobile vehicle emissions budgets for the Reading area for the 1997 annual PM_{2.5} NAAQS, which EPA is approving and finding adequate for transportation conformity purposes. EPA is also approving the comprehensive

emissions inventory for the 1997 annual PM2.5 NAAQS for the Reading area. This rule became effective on March 4, 2015.

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request and Associated Maintenance Plan for the Pennsylvania Portion of the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standard—80 Fed. Reg. 8254 (Proposed Rule). EPA is proposing to approve Pennsylvania's September 5, 2014, request to redesignate to attainment the Pennsylvania portion of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area for both the 1997 annual and the 2006 24-hour PM2.5 NAAQS. EPA is also proposing to approve as a revision to the Pennsylvania SIP the associated maintenance plan to show maintenance of the 1997 annual and the 2006 24-hour PM2.5 NAAQS through 2025 for the Pennsylvania portion of the area. EPA is also proposing to approve the motor vehicle emissions budgets included in Pennsylvania's maintenance plan for the Pennsylvania portion of the area for both the 1997 annual and 2006 24-hour PM2.5 NAAQS. EPA is also proposing to determine that the Pennsylvania portion of the Philadelphia area continues to attain both the 1997 annual and the 2006 24-hour PM2.5 NAAQS. In addition, EPA is proposing to approve the 2007 emissions inventory included in the maintenance plan for the Pennsylvania portion of the area for the 2006 24-hour PM2.5 NAAQS. In this rulemaking action, EPA also addresses the effects of several decisions of the U.S. Court of Appeals for the District of Columbia (D.C. Circuit Court) and a decision of the U.S. Supreme Court: (1) The D.C. Circuit Court's August 21, 2012, decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR); (2) the Supreme Court's April 29, 2014, reversal of the vacatur of CSAPR, and remand to the D.C. Circuit Court; (3) the D.C. Circuit Court's October 23, 2014, decision to lift the stay of CSAPR; and (4) the D.C. Circuit Court's January 4, 2013, decision to remand to EPA two final rules implementing

the 1997 annual PM2.5 NAAQS. This rulemaking action to propose approval of the 1997 annual and 2006 24-hour PM2.5 NAAQS redesignation request and associated maintenance plan for the Pennsylvania portion of the Philadelphia area is based on EPA's determination that Pennsylvania has met the criteria for redesignation to attainment specified in the CAA for both the 1997 annual and 2006 24-hour PM2.5 NAAQS. EPA has taken separate rulemaking actions to approve the redesignation of the New Jersey portion and the Delaware portion of the Philadelphia area for the 1997 annual and 2006 24-hour PM2.5 NAAQS. See 78 Fed. Reg. 54,396, September 4, 2013 (for the New Jersey portion of the area), and 79 Fed. Reg. 45,350, August 5, 2014 (for the Delaware portion of the area). The public comment period ended on March 19, 2015.

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Harrisburg-Lebanon-Carlisle-York Nonattainment Areas to Attainment for the 1997 Annual and the 2006 24-Hour Fine Particulate Matter Standard; Correction—80 Fed. Reg. 7540 (Final Rule; correcting amendment). This document corrects errors in the rule language of a final rule pertaining to the Commonwealth of Pennsylvania's requests to redesignate to attainment the Harrisburg-Lebanon-Carlisle-York nonattainment areas for the 1997 annual PM2.5 NAAQS and the Harrisburg-Lebanon-Carlisle-York 2006 24-hour PM2.5 NAAQS nonattainment area, which was published in the *Federal Register* on Tuesday, December 8, 2014 (79 Fed. Reg. 72,552). This rule became effective on February 11, 2015.

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Infrastructure Requirements for the 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, and 2012 Fine Particulate Matter National Ambient Air Quality Standards—80 Fed. Reg. 6672 (Proposed Rule). EPA is proposing to approve portions of four SIP revision submittals from Pennsylvania. Pennsylvania has made four separate submittals

addressing the infrastructure requirements for the 2008 ozone, the 2010 NO₂, the 2010 SO₂, and the 2012 PM_{2.5} NAAQS. In this rulemaking action, EPA is proposing to approve, in accordance with the requirements of the CAA, the four infrastructure SIP submissions with the exception of some portions of the submittals addressing visibility protection. The public comment period ended on March 9, 2015.

Approval and Promulgation of Air Quality

Implementation Plans; Pennsylvania;

Redesignation of the Allentown Nonattainment

Area to Attainment for the 2006 24-Hour Fine

Particulate Matter Standard—80 Fed. Reg. 6019

(Proposed Rule). EPA is proposing to approve Pennsylvania's request to redesignate to attainment the Allentown nonattainment area for the 2006 24-hour PM_{2.5} national ambient air quality standard (NAAQS). EPA is also proposing to determine that the Allentown area continues to attain the 2006 24-hour PM_{2.5} NAAQS. In addition, EPA is proposing to approve as a revision to the Pennsylvania SIP the associated maintenance plan to show maintenance of the 2006 24-hour PM_{2.5} NAAQS through 2025 for the area. The maintenance plan includes the 2017 and 2025 PM_{2.5} and NO_x MVEBs for the area for the 2006 24-hour PM_{2.5} NAAQS, which EPA is proposing to approve for transportation conformity purposes. Finally, EPA is proposing to approve as a revision to the Pennsylvania SIP the 2007 base year emissions inventory for the area for the 2006 24-hour PM_{2.5} NAAQS. This rulemaking action to propose approval of the 2006 24-hour PM_{2.5} NAAQS redesignation request and associated maintenance plan for the Allentown area is based on EPA's determination that Pennsylvania has met the criteria for redesignation to attainment specified in the CAA for the 2006 24-hour PM_{2.5} NAAQS. The comment period ended on March 6, 2015.

Approval and Promulgation of Implementation

Plans; Pennsylvania; Pennsylvania Regional

Haze State Implementation Plan Revision: Sulfur

Dioxide and Nitrogen Oxide Best Available

Retrofit Technology Limits for the Cheswick Power

Plant—80 Fed. Reg. 2841 (Proposed Rule). EPA is proposing limited approval and limited disapproval of a revision to the Pennsylvania SIP submitted by PADEP. This SIP revision addresses the SO₂ and NO_x best available retrofit technology (BART) requirements for Boiler Number 1 of the Cheswick Generating Station (Cheswick) in Allegheny County. EPA is proposing a limited approval of the SIP revision for Cheswick's SO₂ and NO_x BART requirements on the basis that the revision corrects an error in the SIP and strengthens the Pennsylvania SIP, while EPA is also proposing a limited disapproval of this part of the SIP revision because the SIP revision relies on the Clean Air Interstate Rule (CAIR) and not the Cross-State Air Pollution Rule (CSAPR), which has replaced CAIR. EPA is proposing limited approval and limited disapproval of the Pennsylvania SIP revision addressing the SO₂ and NO_x BART requirements in accordance with the requirements of the CAA and EPA's rules for BART. The comment period ended on February 20, 2015.

Approval and Promulgation of Implementation

Plans; Pennsylvania; Pennsylvania Regional Haze

State Implementation Plan Revision—Particulate

Matter Best Available Retrofit Technology Limit

for the Cheswick Power Plant in Allegheny

County—80 Fed. Reg. 2834 (Final Rule). EPA

is approving a revision to the Pennsylvania SIP submitted by PADEP. This SIP revision addresses an error in the BART requirements for Boiler Number 1 of the Cheswick Generating Station in Allegheny County. EPA is approving the portion of Pennsylvania's SIP revision addressing the PM BART requirements as it is in accordance with the requirements of the CAA and EPA's rules for BART. This rule became effective on February 20, 2015.

Virginia

Approval and Promulgation of Air Quality

Implementation Plans; Virginia; Consumer and

Commercial Products, and Mobile Equipment

Repair and Refinishing Operations—80 Fed.

Reg. 13,510 (Proposed Rule). EPA is proposing

to approve a SIP revision submitted by Virginia. This revision consists of amendments to Virginia's regulation for consumer and commercial products in order to apply provisions pertaining to portable fuel containers, consumer and commercial products, architectural and industrial maintenance coatings, adhesives, adhesive primers, sealants, and sealant primers to the Richmond VOC emissions control area. The revision also consists of amendments to Virginia's regulation for existing stationary sources to apply provisions pertaining to mobile equipment repair and refinishing operations in the Richmond VOC emissions control area. The comment period ended on April 15, 2015.

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standards—80 Fed. Reg. 11,557 (Final Rule). EPA approved a SIP revision submitted by Virginia to address the infrastructure requirements for the 2010 SO₂ primary NAAQS. This rule became effective on April 3, 2015.

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the State Implementation Plan Approved by EPA Through Letter Notice Actions—80 Fed. Reg. 2832 (Final Rule). EPA took final action on administrative changes to the Virginia SIP, which EPA had previously approved through a letter notice action. The revision will allow Virginia to submit SIP revision requests to EPA via electronic submission, with a caveat. Virginia will continue to supply additional paper copies as currently described in, and in accordance with, the requirements of the CAA until such time as EPA amends the federal regulations to allow sole electronic submissions of SIP requests. EPA has determined that this action falls under the "good cause" exemption in the Administrative Procedure Act, which authorizes agencies to dispense with public participation and which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule became effective on January 21, 2015.

West Virginia

Approval and Promulgation of Implementation Plans; West Virginia; Regional Haze Five-Year Progress Report State Implementation Plan—80 Fed. Reg. 12,607 (Proposed Rule—supplemental). EPA is issuing a supplement to its proposed approval of a SIP revision submitted by the West Virginia Department of Environmental Protection (WVDEP). West Virginia's SIP revision addresses requirements of the CAA and EPA's rules that require states to submit periodic reports describing progress toward reasonable progress goals established for regional haze and a determination of the adequacy of the state's existing implementation plan addressing regional haze (regional haze SIP). EPA's proposed approval of West Virginia's periodic report on progress toward reasonable progress goals and determination of adequacy of the state's regional haze SIP was published in the *Federal Register* on March 14, 2014. This supplemental proposal addresses the potential effects on our proposed approval from the April 29, 2014, decision of the U.S. Supreme Court remanding to the D.C. Circuit EPA's CSAPR for further proceedings and the D.C. Circuit's decision to lift the stay of CSAPR. The comment period ended on April 9, 2015.

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; State Boards Requirements; Infrastructure Requirements for the 2008 Ozone, 2010 Nitrogen Dioxide, and 2010 Sulfur Dioxide National Ambient Air Quality Standards—79 Fed. Reg. 12,345 (Final Rule) 79 Fed. Reg. 12,373 (Proposed Rule). EPA is taking direct final action to approve revisions to the West Virginia SIP. The SIP revision addresses the State Boards requirements for all criteria pollutants of the NAAQS. EPA is also approving a related infrastructure element from the West Virginia February 21, 2012, SIP submittal for the 2008 ozone NAAQS, the December 13, 2012, SIP submittal for the 2010 NO₂ NAAQS, and the July 1, 2013, SIP submittal for the 2010 SO₂ NAAQS. This rule became effective on May 8, 2015.

Approval and Promulgation of Air Quality

Implementation Plans; West Virginia's Redesignation Request and Associated Maintenance Plan of the West Virginia Portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard; Correction—80 Fed. Reg. 7970 (Final Rule; correcting amendment). This document corrects an error in the rule language of a final rule pertaining to West Virginia's request to redesignate to attainment the West Virginia portion of the Martinsburg-Hagerstown, WV-MD nonattainment area for the 1997 annual PM_{2.5} NAAQS, which was published in the *Federal Register* on Tuesday, November 25, 2014 (79 Fed. Reg. 70,099). This rule became effective on February 13, 2015.

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Permits for Construction and Major Modification of Major Stationary Sources Which Cause or Contribute to Nonattainment Areas—80 Fed. Reg. 6491 (Proposed Rule). EPA is proposing to grant approval to four SIP revisions submitted by WVDEP on June 29, 2010, July 8, 2011, July 6, 2012, and July 1, 2014, with the exception of certain revisions related to ethanol production facilities on which EPA is taking no action at this time. These revisions proposed for approval pertain to West Virginia's nonattainment NSR program, notably provisions for preconstruction permitting requirements for major sources of PM_{2.5} and NSR reform. The comment period ended on March 9, 2015.



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EPA REGION 5

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Illinois

The U.S. Court of Appeals for the Seventh Circuit denied a petition for review by the Sierra Club that challenged as arbitrary and capricious EPA's decisions to designate the Milwaukee-Racine, Greater Chicago, and the Illinois portion of the St. Louis area as having attained the 1997 ozone NAAQS. The court found that EPA's conclusions had a rational basis, including that using maximum allowable emissions levels for power plants would be unreasonable. *Sierra Club v. EPA*, 774 F.3d 383 (7th Cir. 2014).

Due to the receipt of adverse comments, EPA withdrew a direct final rule (79 Fed. Reg. 62,352) relating to the phase out of the stage II vapor recovery program requirements in the Chicago ozone nonattainment area and amendments to permitting regulations applicable to storage tanks and fuel dispensing. 79 Fed. Reg. 73,202 (Dec. 10, 2014). Subsequently, EPA has issued a final rule to approve a revised submittal to address adverse comments. The rule became effective on April 13, 2015. 80 Fed. Reg. 13,248 (Mar. 13, 2015).

EPA issued proposed and direct final rules approving SIP revisions to amend the Illinois Administrative Code to update the definition of "volatile organic material or volatile organic compound" to add five compounds to the list of exempted compounds. The direct final rule will become effective April 21, 2015, unless EPA adverse comments were received by March 23, 2014. 80 Fed. Reg. 9202, 9258 (Feb. 20, 2015).

EPA issued a proposed rule to approve a SIP revision to the section 110 infrastructure requirements for the 2008 8-hour ground level ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. EPA received comments through

March 30, 2015. 80 Fed. Reg. 10,652 (Feb. 27, 2014).

Indiana

Due to the receipt of adverse comments, EPA withdrew a direct final rule (79 Fed. Reg. 55,641) relating to the state's open burning provisions. 79 Fed. Reg. 65,589 (Nov. 5, 2014). Subsequently, EPA issued a final rule to approve a revised submittal addressing adverse comments. The rule became effective on January 8, 2015. 79 Fed. Reg. 72,979 (Dec. 9, 2014).

EPA issued a final rule to disapprove a SIP revision request to redesignate Lake and Porter Counties to attainment of the 2008 ozone NAAQS because Indiana has not demonstrated that the Chicago nonattainment area has attained this NAAQS. The rule became effective on January 9, 2015. 79 Fed. Reg. 73,205 (Dec. 10, 2014).

EPA issued proposed and direct final rules to approve a SIP revision to Indiana's ambient air quality standards for ozone and particulate matter as consistent with EPA's 2008 ozone and 2012 PM_{2.5} NAAQS. The direct final rule became effective on February 17, 2015. 79 Fed. Reg. 75,431, 75,527 (Dec. 18, 2014).

EPA issued a proposed rule to approve a SIP revision regarding section 110 infrastructure requirements for the 2010 nitrogen dioxide and sulfur dioxide NAAQS. The rule became effective on January 9, 2015. 80 Fed. Reg. 10,644 (Feb. 27, 2015).

EPA issued a final rule to approve a SIP revision to the state's minor NSR construction permit rule for the construction of new units or modifications of existing units at title V and federally enforceable state operating permit sources. The rule became effective on April 15, 2015. 80 Fed. Reg. 13,493 (Mar. 16, 2015).

Michigan

The U.S. Court of Appeals for the Sixth Circuit denied a petition for review by a cement company

relating to EPA's rejection of a state determination of adequate BART controls for regional haze and subsequent imposition of more stringent pollution controls. *St. Mary's Cement, Inc. v. EPA*, 6th Cir., Nos. 13-3105/14-3479, 2015 U.S. App. LEXIS 4759 (Mar. 24, 2015).

Ohio

EPA issued proposed and direct final rules to approve SIP revisions regarding PSD section 110 infrastructure requirements for the 2008 lead, 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. The direct final rule will be effective April 28, 2015, unless EPA received adverse comments by March 30, 2015. 80 Fed. Reg. 10,591, 10,655 (Feb. 27, 2015).

The U.S. Court of Appeals for the Sixth Circuit vacated EPA's redesignation of the Cincinnati-Hamilton metropolitan area for PM_{2.5}, finding that implementation of reasonably available control measures is a prerequisite to redesignation. *Sierra Club v. EPA*, 6th Cir., Nos. 12-3169/12-3182/12-3420, 2015 U.S. App. LEXIS 4304 (Mar. 18, 2015).

Wisconsin

EPA issued a final rule to approve a SIP revision for alternative NO_x limits for the combustion turbine rule for the Milwaukee-Racine area formerly nonattainment for the 1997 ozone standard. The case-by-case basis determination found that the proposed limits satisfy applicable RACT requirements. The rule became effective on December 9, 2014. 79 Fed. Reg. 72,976 (Dec. 9, 2014).

EPA REGION 6

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Arkansas

The Arkansas Pollution Control and Ecology Commission held public hearings on January 12, 2015, to receive comments on proposed changes to three air pollution control regulations.

The proposed changes to Regulations 18, 19, and 26 are necessary in order to adopt EPA's 2012 NAAQS for PM_{2.5}, the 2006 NAAQS for PM₁₀, the 2008 NAAQS for ozone, the 2008 NAAQS for lead, the 2010 NAAQS for nitrogen dioxide, and the 2010 NAAQS for sulfur dioxide.

Stakeholders representing a variety of interested parties participated in efforts to develop the NAAQS state implementation plan. A subgroup formed by stakeholders held their second meeting at the Arkansas Department of Environmental Quality (ADEQ) on February 24, 2015. At an earlier meeting on January 28, 2015, stakeholders established the subgroup in order to focus on creating a protocol for when modeling will be required for facilities to help provide certainty for industries seeking air permits from the ADEQ.

The ADEQ held a public hearing on March 18, 2015, to receive comments on the proposed emission inventory (EI) revision for Crittenden County. Based on air quality monitoring from 2008 to 2013, Crittenden County was designated in 2012 as nonattainment for ozone. As a result, the ADEQ will need to revise the Crittenden County EI and submit the revision to EPA for its approval.

Louisiana

The Louisiana Department of Environmental Quality (LDEQ) Secretary Peggy Hatch named

Chance McNeely as the new assistant secretary for the Office of Environmental Compliance. The office has jurisdiction over air enforcement. McNeely was previously a policy advisor in the office of the governor where he served as a liaison to LDEQ. "Chance McNeely brings a fresh dynamic to the job," Hatch said. "His background in government and policy gives him a unique perspective on the process of environmental regulation."

The agreement to conduct open burning of over 15 million pounds of M6 propellant in the Camp Minden complex has been criticized due to safety and air quality concerns. EPA, LDEQ, and the Louisiana National Guard signed an agreement, effective November 4, 2014, for the on-site controlled burning of the propellants. However, concern about the air quality effects on neighboring populations has led to a review of potential alternative disposal strategies. At this time, no final decision has been made on the most protective method of disposal.

LDEQ has proposed a rule to adopt the EPA's updated NAAQS language for PM₁₀. The rule, when final, will maintain equivalency with the federal regulations and/or standards. A public hearing was held on February 25, 2015.

Texas

EPA approved a SIP revision to allow use of an optical fugitive monitoring method for VOC emissions in Texas. The direct final rule is effective on April 27, 2015, without further notice, unless EPA received relevant adverse comment by March 30, 2015. 80 Fed. Reg. 10,352 (Feb. 26, 2015).

Emission inventory revisions were approved for the Dallas-Fort Worth (D/FW) and the Houston-Galveston-Brazoria (HGB) nonattainment areas relating to the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The direct final rule will be effective April 21, 2015, without further notice, unless EPA received adverse comment by March 23, 2015. 80 Fed. Reg. 9204 (Feb. 20, 2015).

EPA delegated to Texas the authority to implement and enforce National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). The rule is effective on January 26, 2015, without further notice, unless EPA received relevant adverse comment by December 26, 2014. 79 Fed. Reg. 70,102 (Nov. 25, 2014).

EPA rescinded a federal implementation plan (FIP) for Texas for greenhouse gas (GHG) Prevention of Significant Deterioration (PSD) permitting, with three limited circumstances for retained federal permitting authority. The final rule is effective on November 10, 2014. 79 Fed. Reg. 66,641 (Nov. 10, 2014). Simultaneously, elsewhere in the *Federal Register*, EPA announced approval of Texas's SIP revision implementing PSD permitting for GHG in Texas.

EPA proposed a Regional Haze and Interstate Visibility Transport Federal Implementation Plan for Texas in the December 16, 2014, *Federal Register*. Simultaneously, EPA proposed to partially approve and partially disapprove a revision, received on March 31, 2009, to the Texas state implementation plan (SIP) that addresses regional haze. 79 Fed. Reg. 74,817 (Dec. 16, 2014). EPA extended the public comment period for this proposal until April 20, 2015. 80 Fed. Reg. 3536 (Jan. 23, 2015).

EPA proposed a finding of nonattainment and reclassification of the Dallas/Fort Worth (D/FW) 1997 8-hour ozone nonattainment area. The D/FW area would be reclassified by operation of law from serious to severe ozone nonattainment for the 1997 8-hour ozone standard. The proposal would also require Texas to submit SIP revisions to address the severe ozone nonattainment area requirements of the Clean Air Act. Comments on this proposed rule were due on or before March 19, 2015. 80 Fed. Reg. 8274 (Feb. 17, 2015).

EPA is seeking comments on an August 5, 2014, request by Dow Chemical Company and ExxonMobil Chemical Company for an alternative

means of emission limitation (AMEL) in order to operate pressure-assisted multipoint ground flares covered by flare requirements in 40 C.F.R. parts 60 and 63. Comments were due on or before March 30, 2015. 80 Fed. Reg. 8023 (Feb. 13, 2015).

EPA proposed to approve revisions to the Texas SIP for the Houston/Galveston/Brazoria, and Dallas-Fort Worth 1997 8-hour ozone nonattainment areas. The RACT requirements apply to sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in these areas. 80 Fed. Reg. 2846 (Jan. 21, 2015).

On January 23, 2015, EPA denied in part three petitions asking EPA to object to operating permits issued by the Texas Commission on Environmental Quality (TCEQ) to Luminant Generating Company, LLC, relating to three coal-fired steam electric generating stations. 80 Fed. Reg. 9456 (Feb. 23, 2015).

TCEQ proposed revisions to its emission credit banking and trading program. 39 Tex. Reg. 10,214 (Dec. 26, 2014).

TCEQ proposed revisions to incorporate a procedure for counties to opt out of the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program. 39 Tex. Reg. 9469 (Dec. 5, 2014).

TCEQ adopted rules implementing an expedited permitting program for air quality permits on November 10, 2014. A guidance document can be found at <http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/NewSourceReview/ep-in-impl-guide-external-6258.pdf>.

TCEQ sought comment on renewing a general title V operating permit for landfills. The comment period closed on December 8, 2014.

November 26, 2014—The TCEQ filed comments in opposition to EPA's proposal to lower the primary NAAQS for ozone. <http://www.tceq.state.tx.us/news/releases/11-26opposeozone>

December 17, 2014—A Texas federal judge on Wednesday decided a citizen suit against Exxon Mobil Corp., which was seeking \$641 million in penalties by environmental groups over emissions at ExxonMobil's Baytown, Texas, refinery, finding that even though emissions exceeded permitted limits at times, the events did not warrant a penalty.

December 17, 2014—Luminant Generating Company and Sierra Club reached a settlement over years'-long allegations by Sierra Club against four of Luminant's coal-fired power plants. Sierra Club agreed to drop two lawsuits and other allegations, and Luminant agreed not to enforce a \$6.4 million award in attorney's fees and costs assessed against Sierra Club in a previous failed lawsuit.

New Mexico

On January 23, 2015, the Environmental Improvement Board of the New Mexico Environment Department (NMED) approved amendments to 20.2.1 NMAC—General Provisions to include language authorizing the electronic submittal of data, reports, and permit applications in lieu of paper submittals. The amendments to 20.2.1 NMAC are a revision to the state implementation plan (SIP) for air quality and became effective February 27, 2015.

Effective January 1, 2015, new air permit application fees are in effect. Information on the new fees can be found at http://www.nmenv.state.nm.us/aqb/permit/permit_fees.htm.

On December 1, 2014, NMED filed technical comments on EPA's proposed 111(d) Clean Power Plan rules. See http://www.nmenv.state.nm.us/aqb/documents/NMED_111d_Comments.pdf.

As of February 18, 2015, NMED is accepting nominations for the first annual Governor's Environmental Awards. The new program is a cooperative effort of the New Mexico Environment Department, Energy Minerals, and Natural Resources Department, New Mexico Department

of Game and Fish, Office of the State Engineer, and Office of the Governor. The deadline for nominations was March 18, 2015. For more information about the program, contact Jill Turner, New Mexico Environment Department, Office of the Secretary, jill.turner@state.nm.us, (505) 222-9548.

On February 13, 2015, the New Mexico State Senate reconfirmed Ryan Flynn as Secretary of the New Mexico Environment Department. Secretary Flynn was reconfirmed by a vote of 36-0. Flynn was selected by Governor Susana Martinez as her choice for Cabinet Secretary in April of 2013. Flynn served as the General Counsel of the New Mexico Environment Department under Governor Martinez from January 2011 to April 2013.

On February 20, 2015, the Albuquerque-Bernalillo County Air Quality Control Board (ABAQC Board) issued a public review draft concerning amendments to the Prevention of Significant Deterioration review.

On February 20, 2015, the ABAQC Board issued a public review draft concerning revisions to the SIP to implement the 2010 SO₂ NAAQS and adopt an infrastructure SIP for SO₂.

On January 26, 2015, the board participated in filing the Western Regional Air Partnership's Regional SO₂ Emissions and Milestone Report required under section 309 of the federal CAA and the federal regional haze rule.

Oklahoma

The Oklahoma Department of Environmental Quality received delegation to implement and enforce certain National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources) other than those located in Indian Country. This rule is effective on April 27, 2015, without further notice, unless EPA received relevant adverse comment by March 26, 2015. 80 Fed. Reg. 9622 (Feb. 24, 2015).

EPA proposed a Regional Haze and Interstate Visibility Transport Federal Implementation Plan for Oklahoma in the December 16, 2014, *Federal Register*. Simultaneously, EPA proposed to partially disapprove a revision to the Oklahoma SIP submitted on February 19, 2010, that addresses regional haze. 79 Fed. Reg. 74,817 (Dec. 16, 2014). EPA extended the public comment period for this proposal until April 20, 2015. 80 Fed. Reg. 3536 (Jan. 23, 2015).

On November 10, 2014, Oklahoma announced that it remained in attainment of the national ambient air quality standard for ozone at the conclusion of the 2014 ozone season. However, the state warned that if EPA finalizes a lower standard for ozone in the range proposed, Oklahoma will have significant difficulties meeting this new standard at most, if not all, ozone monitors across the state. The Oklahoma City and Tulsa metropolitan areas have submitted ozone advance plans that are designed to encourage voluntary reductions in emissions of ozone precursors. <http://www.deq.state.ok.us/mainlinks/media/2014news/nov/Ozone.pdf>.

As of November 19, 2014, the Oklahoma Department of Environmental Quality and EPA updated guidance for both high priority and federally reportable violations, including significant changes to the penalty guidance. http://www.deq.state.ok.us/aqdnew/ComplianceEnforcement/AQD_PenaltyGuide.pdf.

On November 17, 2014, the department proposed to modify OAC 252:100-17, part 3, General Purpose Incinerators and part 9, Commercial and Industrial Solid Waste Incineration Units (CISWI), to adjust enforceable requirements and compliance dates consistent with federal requirements that were revised February 7, 2013. The proposal incorporated changes required as a result of revisions to the emission guidelines in 40 C.F.R. part 60, subpart DDDD for state plans under sections 111(d) and 129 of the federal Clean Air Act (CAA), applicable to existing CISWI units.

EPA REGION 8

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Colorado

Colorado Proposes Revised 8-Hour Ozone Standard Implementation Schedule; Denver Metro Designation Likely to “Bump Up” from Marginal to Moderate Attainment Come January 2016.

EPA issued its proposed rule to the 8-hour ozone NAAQs on December 17, 2014, indicating that it may lower the allowable levels of ozone to a range between .065 and .070 ppm; this is a significant tightening of the standard from the current level of .075 ppm. The final rule is expected in October 2015.

The Colorado Regional Air Quality Council (CRAQC) convened on February 6, 2015, to address a timeline for adopting its own standards in anticipation of the proposed lowered NAAQS. Though the standards are not yet final, CRAQC is moving forward with the assumption that the Denver Front Range Non-Attainment Area (DFR/NAA) will “bump up” from marginal nonattainment to moderate nonattainment when the new standards are adopted in January 2016. CRAQC indicates that the governor’s office will submit its designation recommendations to EPA by late 2016, and that this number will be based on 2014–2016 ozone monitoring data. EPA will designate the nonattainment areas in Colorado by late 2017, and the moderate attainment deadline will be in July 2018.

CRAQC states that is likely to attain the moderate nonattainment standard by 2018 with the currently existing system in place. CRAQC identifies a number of factors that will contribute to meeting this standard without the need to take significant additional measures. These factors include existing federal measures on mobile sources and nonroad sources, Colorado’s unique 2014 oil and gas regulations, and voluntary efforts such as

the alternative fuels program, the OzoneAware program, and transportation programs that are already in place.

EPA Region 8, Colorado and Noble Energy Lodge \$73 MM Consent Decree to Settle Alleged Clean Air Act Violations. EPA, the Department of Justice, and the state of Colorado announced a settlement with Noble Energy, Inc., that resolves alleged Clean Air Act violations resulting from Noble's oil and gas exploration and production activities in the Denver-Julesburg Basin (DJ Basin). The settlement resolves claims that Noble failed to adequately design, size, operate, and maintain vapor control systems on its condensate storage tanks, resulting in emissions of volatile organic compounds (VOCs). The settlement covers all of Noble's approximately 3400 tank batteries in the DJ Basin. Approximately 3 percent of those tank batteries were inspected by EPA and Colorado after Noble received a detailed Clean Air Act section 114 information request in 2013, resulting in the subsequent enforcement action.

If approved by the court, the settlement will cost Noble around \$73 million dollars in facility upgrades, environmental mitigation projects, and civil penalties. Noble will spend approximately \$60 million of that total amount on system upgrades and monitoring. Under the settlement, Noble will conduct engineering evaluations to ensure that its vapor control systems are adequately designed to capture and control VOC emissions. Noble will also install monitors on its storage tanks to detect potential releases. These activities will be audited by a third party. In addition to the system upgrades, Noble is also required to pay \$4.5 million to fund environmental mitigation projects, \$4 million on supplemental environmental projects, and a \$4.95 million civil penalty. Colorado will receive \$1.475 million of the total civil penalty.

In an article published in *Law360 Environment* on April 22, 2015, EPA Assistant Administrator Cynthia Giles stated: "We're hoping that other companies can learn from this and be able to see whether their pollution controls are adequate . . .

for the operation at hand . . . [w]e think some of the innovative ideas that are included in this agreement are things that other companies will be interested in. And it's certainly the case that Noble is not the only company, and this basin is not the only basin, that has this issue."

Montana

Coal-Fired Power Plant Announces Shutdown due to Mercury Air Toxics Standard, as the Supreme Court Is Set to Weigh In on the Rule's Legality. In February, a Montana coal-fired power plant, the J.E. Corette plant, announced it will permanently shut down operations this August due in large part to the U.S. Environmental Protection Agency's (EPA) mercury and air toxics standard (MATS). The plant's owner, PPL Montana (PPL), stated that the price tag to install the pollution controls required by MATS, estimated by the company at around \$40 million, combined with low wholesale power prices in the Northwest, would make continued operation of the plant too costly. PPL initially announced in 2012 that it would temporarily shut down the facility, but has now decided that the economic impacts of MATS warrant a permanent shutdown. The 153-megawatt facility, which burns coal from Wyoming's Powder River Basin, has operated since 1968.

MATS—which has been in the works since 1994, was finalized in 2012, and sets a compliance deadline for many affected facilities of April 2015—requires coal-fired power plants to reduce emissions of hazardous substances, including mercury, lead, arsenic and cadmium, among others, below certain numerical thresholds through installation of technology-based emission controls. If required emission reductions cannot be met, plants generally will be retired. EPA estimates that MATS will come at a cost to industry of as much as \$9.6 billion annually, but will produce health and environmental benefits totaling \$37 billion to \$90 billion each year.

On March 25, 2015, the Supreme Court held oral argument on a judicial challenge to MATS

brought by several states and utility and industry groups, which centers on EPA's failure to consider costs before moving forward with the mercury regulations. A decision in the consolidated cases—*Utility Air Regulatory Group v. EPA*, *National Mining Association v. EPA*, and *Michigan v. EPA*—is due by the end of June. According to PPL, favorable or not, the outcome of the Supreme Court case will likely not impact the permanent closure of Montana's J.E. Corette plant.

North Dakota

EPA Affirms North Dakota BART Standards for Regional Haze SIP. On February 18, 2015, EPA upheld portions of North Dakota's regional haze state implementation plan (regional haze SIP). See 80 Fed. Reg. 8550 (Mar. 20, 2015). Back in April 2012, EPA approved portions of North Dakota's regional haze SIP as it pertained to best available retrofit technology (BART) standards for NO_x emissions (though it disapproved other portions, and instituted a federal implementation plan (FIP), discussion on that topic exceeds the scope of this summary). Commentators note that EPA's initial approval of this portion of the regional haze SIP appeared to be primarily based on a North Dakota federal district court decision in 2011, which determined that the state's adoption of certain BACT standards was not unreasonable. See *United States v. Minnkota Power Co-Op, Inc.*, 831 F. Supp. 2d 1109 (D.N.D. 2011). Parties opposed the April 2012 BART standard approved by EPA. Those parties include Earthjustice and Sierra Club, who filed a petition for reconsideration in June 2012. EPA granted the request for reconsideration of the BART standards for NO_x emission limits in March 2013, and accepted 60 days of public comments. That petition for reconsideration argued that EPA should not have upheld North Dakota's determination that certain selective catalytic reduction (SCR) controls were technically infeasible for burning North Dakota lignite in cyclone boilers at two coal-fired power plants (including two units at the Milton R. Young Station, and one unit at the Leland Olds Station). Instead, in its regional haze SIP, North Dakota

determined that selective non-catalytic reduction (SNCR) controls, along with advanced separated overfire air (ASOFA) controls, were technically feasible alternatives. EPA refers to the *Minntoka* decision in its approval of these BART standards, stating that it can rely on the federal district court's recent decision to uphold similar BACT standards in its determination that North Dakota's BART standards are reasonable.

The environmental groups seeking reconsideration argued in comments that recent studies of SCR controls indicate technical feasibility of this technology; and that EPA should consider those studies in its reconsideration. This is despite of the fact that the studies were released after the completion of rulemaking. EPA disagreed, stating that while the studies were informative on the issue of whether SCR controls were technologically feasible, EPA was not willing to perpetually restart the BACT and BART rulemaking processes in order to always accommodate late-breaking technology. Otherwise, EPA would "seldom be able to finalize an action." Commenters' requests for increased emissions limits, additional controls, and other modifications to the approved regional haze SIP were generally rejected by EPA on the basis that such issues were not up for debate in the reconsideration. EPA noted that they would *not* address "technical comments addressing the merits of SCR over SNCR, since we are basing our decision on the fact that the State's BART determination is supported by its BACT determination." EPA rejects such comments in protest, agreeing with petitioners that SCR control technologies are preferred to those permitted in the regional haze SIP.

Utah and Wyoming

Western Regional Air Partnership Releases "2013 Regional SO₂ Emissions and Milestone Report." Since 2003, Utah, Arizona, Wyoming, and Albuquerque-Bernalillo County, New Mexico, have been tracking SO₂ emissions under section 309 of the federal regional haze rule (40 C.F.R. part 51), as part of the pre-trigger portion of the

SO₂ Milestone and Backstop Trading Program. In March 2015, the Western Regional Air Partnership (WRAP)—which is assisting the three states and one county with the implementation and management of a voluntary regional emission reduction program—issued the 2013 Regional SO₂ Emissions and Milestone Report (report), which compares combined emissions to set voluntary emission-reduction milestones for the participating states and county. The report indicates that regional emissions fell below the SO₂ emissions milestone for 2013—that is, the regional milestone for 2013 was 185,795 tons, while the actual recorded emissions were only 100,391 tons (as adjusted to account for changes in monitoring and calculation methods). Of the total 100,391 tons of SO₂ emissions for the region, Utah reported 24,609 tons and Wyoming reported 58,267 tons. If the participating states and county had failed to meet the emissions milestone through the voluntary program (or if they fail to do so in subsequent years), then that would trigger the above-noted backstop trading program and implement a regulatory emissions cap for the states and county, allocate emissions allowances (or credits) to affected sources based on the emissions cap, and require affected sources to hold sufficient allowances to cover their annual emissions. The 2013 report can be located at http://www.wrapair2.org/pdf/2013%20Milestone%20Report_WRAP_FINAL.pdf.

EPA REGION 9

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Federal Law Developments in the Pacific Southwest

In *WildEarth Guardians v. McCarthy*, 772 F.3d 1179 (9th Cir. 2014), WildEarth Guardians and Sierra Club challenged the decision by the Northern District of California that the EPA administrator’s failure to promulgate Prevention of Significant Deterioration (PSD) regulations for

the 2008 revision of the ozone national ambient air quality standard (NAAQS) pursuant to section 166(a). Section 166(a) provides in part: “In the case of pollutants for which [NAAQS] are promulgated after August 7, 1977, [the Administrator] shall promulgate such regulations not more than 2 years after the date of promulgation of such standards.” 42 U.S.C. § 7467(a). EPA argued that this was a one-time duty, while WildEarth and Sierra Club had argued that the duty was triggered each time a NAAQS is revised. The district court held that the duty, however interpreted, was not sufficiently clear to compel the administrator to issue new regulations. The Ninth Circuit affirmed.

In *NRDC v. U.S. DOT*, 770 F.3d 1260 (9th Cir. 2014), the National Resources Defense Council (NRDC) and several other environmental groups challenged DOT’s compliance with the conformity requirements of the Clean Air Act of an elevated expressway to connect the ports of Los Angeles with I-405. DOT and its cooperating agencies conducted a PM_{2.5} “hot spot” analysis, but relied upon a monitor located approximately five miles away from the future freeway. NRDC challenged this decision, contending that the plain meaning of 42 U.S.C. § 7506(c)(1)(B)’s use of the term “any area” requires that the monitor be located in such area. The court rejected this argument, finding that “area” is inherently ambiguous. NRDC next argued that EPA’s adoption of regulations subsequent to the commencement of the suit defining “area” more narrowly as within a project area controlled, but the Ninth Circuit found that EPA had not clearly expressed an intent that the rule apply retroactively, as required by *Kankamalage v. INS*. Finding the rule ambiguous, the court deferred to EPA’s and DOT’s Conformity Guidance, which it found implicitly authorized by use of the neighboring area because it gave as an example use of “data from an existing air quality monitor in a location similar to the project area, even if that monitor is not located within the immediate vicinity of the new project.” NRDC objected that since the Conformity Guidance was not adopted through notice-and-comment rulemaking, the court should not defer, but the Ninth Circuit demurred, noting, “we afford *Auer* deference to an agency’s interpretation of its own regulations regardless of

whether that interpretation was adopted through notice-and-comment rulemaking.” Turning to the merits, the court found that the agencies’ use of the other monitor was reasonable and not arbitrary and capricious.

In *Sierra Club v. McCarthy*, 2015 WL 889142 (N.D. Cal.), Sierra Club brought a lawsuit to compel EPA to issue sulfur dioxide (SO₂) designations for portions of the country that were not designated in EPA’s August 5, 2013, “designation rule,” where EPA designated 29 areas in 16 states. Several states intervened. Negotiations ensued and ultimately EPA and Sierra Club proposed a consent decree opposed by the states. First, the court rejected an argument that it lacked jurisdiction over the negotiations pursuant to 42 U.S.C. § 7607(b), finding that EPA’s decision to defer action is not a “final order” and distinguishing *Maine v. Thomas*, 874 F.2d 883 (1st Cir. 1989), based on the fact that the preamble discussion was not “final” agency action. The court then rejected the states’ contention that EPA should classify as “unclassifiable” areas it could not classify as of the due date. Instead, the court found, with EPA and Sierra Club, that EPA should be given more time beyond what Congress allowed to reach a decision. The court also reasoned that because Congress did not specify any consequences of EPA missing its deadline, an extension was permissible. The court thus issued EPA’s and Sierra Club’s proposed consent decree that requires EPA to issue decisions on the remaining areas in three phases:

Phase 1: within 16 months, all areas that have three years of monitored data showing a violation of the NAAQS as well as designations for areas that “contain any stationary source that has not been ‘announced for retirement’ . . . and [emitted more than 16,000 tons SO₂ in 2012 or 2,600 tons of SO₂ at a rate of at least 0.45 lb/mmbtu.”

Phase 2: By December 31, 2017, all remaining undesignated areas for which, “by January 1, 2017 states have not installed and begun operating a new SO₂ monitoring network meeting specifications in EPA’s anticipated rulemaking [the Data Requirements Rule] directing states to collect

and analyze additional information regarding SO₂ emissions concentrations.”

Phase 3: By December 31, 2020, all remaining undesignated areas.

State Law Developments in the Pacific Southwest

In *Engine Manufacturers Association v. California Air Resources Board (CARB)*, 231 Cal. App. 4th 1022 (2014), the Engine Manufacturers Association (EMA) challenged CARB’s adoption of a regulation requiring the engine manufacturers to duplicate precertification testing of on-board diagnostic (OBD) systems on a sample of in-use engines that have completed between 70 and 80 percent of the certified full useful life age. If the tested engines properly illuminate a warning light, no further testing is required; if not, additional testing is required. If too many engines failed, then CARB can order a recall and repair. EMA challenged on the basis that such “in-use engines” were beyond the manufacturer’s control and that California law did not authorize recall without a showing of a violation of an emission standard or emissions test procedure. The trial court granted EMA’s motion. The court of appeals, however, disagreed, finding that CARB’s standard met the definition of a “performance standard” under Government Code section 11342.570 and as an “in-use performance standard” under Government Code section 43013. Once it reached this conclusion, the court of appeals found that a recall is authorized under 13 CCR section 1971.5(c)(1) and (d)(3)(A), as well as within CARB’s regulatory authority. Finally, the court of appeals found that while the trial court was correct that Government Code 43104 and 43105 did not authorize the regulations, that was the wrong question and the trial court should have determined whether the legislature’s failure to specifically authorize “in-use” OBD systems and recall indicated an intent to deny such power. The court of appeals found no such intent. Accordingly, the judgment on the pleadings was reversed and remanded for trial on the issue of whether the requirements were unduly “onerous and costly.”

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