



Office of Air Quality Planning and Standards

# **Clean Air Updates: NAAQS and Other Implementation-Related Topics**

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# Overview of Presentation

- NAAQS Schedules and Implementation
  - Ozone
  - NO<sub>2</sub>
  - SO<sub>2</sub>
  - PM<sub>2.5</sub>
  - Lead
- Exceptional Events and Fire Policy
- Infrastructure SIPs
- Interstate Pollution Transport
- Regional Haze
- GHG Permitting and Title V
- New Source Review
- SIP Reform
- Appendix

# **NAAQS: ANTICIPATED SCHEDULES & IMPLEMENTATION UPDATE**

# Current Schedule for Ongoing NAAQS Reviews

(updated September 12, 2013)

MILESTONE	POLLUTANT						
	Ozone	Lead	NO <sub>2</sub> Primary	SO <sub>2</sub> Primary	NO <sub>2</sub> /SO <sub>2</sub> Secondary	CO	PM
NPR	TBD	2014	Feb 2016	Feb 2017	May 2017	Summer 2017	TBD
NFR	TBD	TBD	Nov 2016	Nov 2017	Feb 2018	Spring 2018	TBD

# Anticipated NAAQS Implementation Milestones

(updated September 2013)

Pollutant	Final NAAQS Date (or Projection)	Infrastructure SIP Due	Designations Effective	Attainment Demonstration Due	Attainment Date
PM <sub>2.5</sub> (2006)	Oct 2006	Oct 2009	Dec 2009	Dec 2012	2015 (Mod) 2019 (Ser)
Pb (2008)	Oct 2008	Oct 2011	Dec 2010/2011	June 2012/2013	Dec 2015/2016
NO <sub>2</sub> (2010) (primary)	Jan 2010	Jan 2013	Feb 2012	none	none
SO <sub>2</sub> (2010) (primary)	June 2010	June 2013	Oct 2013 (+2 rounds)	April 2015	Oct 2018
Ozone (2008)	Mar 2008	Mar 2011	July 2012	Mid 2015/2016	2015/2032
PM <sub>2.5</sub> (2012)	Dec 2012	Dec 2015	Early 2015	Mid 2016	2021 (Mod) 2025 (Ser)
Ozone (current review)	TBD	TBD	TBD	TBD	TBD

# 2008 Ozone NAAQS Implementation

- Revised primary 8-Ozone standard in 2008 (.075 ppm/8-hr)
  - Litigation regarding level of 2008 NAAQS: primary standard upheld, secondary standard remanded for reconsideration
- EPA designations for the 2008 Ozone NAAQS became effective on July 20, 2012
  - EPA denied 29 petitions for reconsideration of certain final area designations in December 2012
  - Pending litigation regarding certain final area designations
- 2008 Ozone NAAQS SIP Requirements Rule
  - Proposed May 29, 2013 (78 FR 34178)
    - Comment period closed 9/4/13
  - Anticipated publication of final rule in Spring 2014
  - Attainment plans and demonstrations due July 2015 or July 2016 depending on classification

# Current Ozone NAAQS Review

- Current Ozone NAAQS Review
  - Final Integrated Science Assessment – Released February 15, 2013
  - Risk and Exposure Assessment and Policy Assessment
    - Anticipate releasing 2<sup>nd</sup> drafts at the end of the year
    - The Clean Air Scientific Advisory Committee (CASAC) and the public will review these documents at a CASAC meeting likely in late March 2014
    - First drafts were reviewed by CASAC and the public in a September 2012 meeting
  - Proposal and final dates are TBD

# 2010 NO<sub>2</sub> NAAQS Implementation

- Revised primary NO<sub>2</sub> standard in January 2010 (100 ppb/1-hr)
- Guidance on NO<sub>2</sub> PSD permit modeling issued June 2010 and March 2011
  - <http://www.epa.gov/NSR/guidance.html>
- Designations of “unclassifiable/attainment” for all areas effective February 2012
- NAAQS rule established requirements for near roadway monitors on phased-in basis
  - Additional clarification/guidance NO<sub>2</sub> permit modeling planned for Fall 2013



# 2010 SO<sub>2</sub> NAAQS Implementation

- Revised primary SO<sub>2</sub> standard in June 2010 (75 ppb/1-hr)
- Information on EPA 's SO<sub>2</sub> area designations and implementation strategy
  - <http://www.epa.gov/airquality/sulfurdioxide/implement.html>
- EPA issued PSD permit modeling guidance documents applicable to the 1-hr SO<sub>2</sub> NAAQS on August 23, 2010 and March 1, 2011
  - [http://www.epa.gov/scram001/so2\\_modeling\\_guidance.htm](http://www.epa.gov/scram001/so2_modeling_guidance.htm)
- Technical assistance documents available at <http://www.epa.gov/airquality/sulfurdioxide/implement.html>
  - Source-Oriented Sulfur Dioxide (SO<sub>2</sub>) Monitoring Technical Assistance Document
  - Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards Designations Modeling Technical Assistance Document

# 2010 SO<sub>2</sub> NAAQS Implementation

- Initial nonattainment area designations based on violating monitors completed in August 2013 – 29 areas designated
  - Two additional future rounds of initial designations based on modeling (2017) and monitoring (2020) are planned
  - EPA has received two notices of intent to sue and two lawsuits have been filed for failure to designate remaining areas
  
- SO<sub>2</sub> Data Requirements Rule
  - Objective is to provide information to EPA in an orderly fashion to inform initial area designations
  - Proposal targeted for early 2014 and final in late 2014
  
- 1-hr SO<sub>2</sub> NAAQS Nonattainment SIP Elements Guidance
  - Draft in Fall 2013

# 2012 PM<sub>2.5</sub> NAAQS Revision

- EPA revised the annual primary PM<sub>2.5</sub> NAAQS to 12  $\mu\text{g}/\text{m}^3$  from the previous level of 15  $\mu\text{g}/\text{m}^3$  on December 14, 2012
  - Published in Federal Register on January 15, 2013
  - NAAQS effective date: March 18, 2013
- 2012 final rule included implementation transition provisions and guidance for PSD

# 2012 PM<sub>2.5</sub> NAAQS Implementation

- *NRDC v. EPA* (D.C. Cir. Jan. 4, 2013): D.C. Circuit decision addressing challenges to two final rules promulgated by the EPA in 2007 and 2008 to implement NAAQS for PM<sub>2.5</sub>
- Challenge to EPA's decision to proceed under PM<sub>2.5</sub> requirements of Part D, Subpart 1 of Title I (Subpart 1) rather than the requirements in Part D, Subpart 4 of Title I (Subpart 4)
- The court held that EPA improperly proceeded under Subpart 1, and that the provisions in Subpart 4 applied to the rulemakings

- 2012 PM NAAQS SIP Requirements NPRM
  - Under development
  - Proposal will clarify nonattainment implementation requirements according to Subpart 4 of Part D of CAA, consistent with D.C. Circuit Court decision
  - Will also address how Subpart 4 decision affects NSR nonattainment area requirements (e.g., major source threshold, precursors, etc.)
  
- Propose rule early 2014; finalize one year later

# 2012 PM<sub>2.5</sub> NAAQS Implementation

- April 2013 guidance on Initial Area Designations for the 2012 Revised Primary Annual Fine Particle National Ambient Air Quality Standard
  - <http://www.epa.gov/pmdesignations/2012standards/docs/april2013guidance.pdf>
- Available data sets to facilitate area analyses, and interactive designations tools are available on the PM<sub>2.5</sub> designations website at <http://www.epa.gov/pmdesignations/2012standards/techinfo.htm> and [http://geoplatform2.epa.gov/PM\\_MAP/index.html](http://geoplatform2.epa.gov/PM_MAP/index.html) (PM Designations Mapping Tool)

# 2012 PM<sub>2.5</sub> NAAQS Implementation

- Draft guidance on PM<sub>2.5</sub> permit modeling was released in March 2013 with a 90-day public comment period that ended on May 31, 2013
  - Currently addressing comments received during public comment period
  - Comments received from federal/state/local government organizations, industry/consultants and environment groups
  - Draft guidance can be found at [http://www.epa.gov/ttn/scram/guidance/guide/Draft\\_Guidance\\_for\\_PM25\\_Permit\\_Modeling.pdf](http://www.epa.gov/ttn/scram/guidance/guide/Draft_Guidance_for_PM25_Permit_Modeling.pdf)
  
- Release of a revised guidance document is anticipated by the end of 2013

# Lead NAAQS

- Revised NAAQS in 2008, primary standard is 0.15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )
- 21 NA areas designated (2010/2011); states working on infrastructure SIPs and attainment SIPs
- Current Lead NAAQS Review
  - CASAC's draft letter on our draft Policy Assessment concurs with staff recommendation that the NAAQS not be revised
  - Propose Rulemaking - 2014
  - Finalize Rulemaking - TBD



# EXCEPTIONAL EVENTS AND FIRE POLICY UPDATE

- Since 2007 EER promulgation, stakeholders have encouraged EPA to:
  - Identify and clarify “reasonable control” expectations
  - Streamline the implementation process
  - Revise the Exceptional Events Rule, develop and release guidance, and increase collaboration and communication during the demonstration development process
  
- EPA issued Interim Exceptional Events Implementation Guidance in May 2013
  
- With release of guidance documents, EPA also announced:
  - Intention to pursue revisions to the 2007 Exceptional Events Rule
  - Intention to develop exceptional events implementation guidance to address wildfire-related events that may affect ozone concentrations

# Exceptional Events Next Steps

- **Guidance to Support Data Exclusion Requests for Wildfire-Related Events that May Affect Ozone Concentrations**
  - Provide guidance on how air agencies can incorporate the exceptional events rule revisions into ozone/wildfire event demonstrations
  - Discuss the range of technical tools available to support the exceptional event rule criteria
  
- **Schedule**
  - Rule revisions
    - Proposal – early 2014/Promulgation – early 2015
  - Guidance to support data exclusion requests for wildfire-related events that may affect ozone concentrations
    - Draft guidance – early 2014/Final – early 2015

# Interim Air Quality Policy on Wildland and Prescribed Fires

- In 1998, EPA issued the Interim Air Quality Policy on Wildland and Prescribed Fires.
  - Policy discussed actions to minimize air pollutant emissions from prescribed fires
  - It did not address prescribed fires for the agriculture sector
- We are considering addressing practices to minimize emissions for prescribed agriculture burning
- We will include the opportunity for public involvement, in particular for the agriculture community, prior to issuing any policy

# INFRASTRUCTURE SIP AND TRANSPORT UPDATE

# Infrastructure SIP (I-SIP) Obligations

NAAQS	Due date under CAA
1997 Ozone	July 2000
1997 PM <sub>2.5</sub>	July 2000
2006 PM <sub>2.5</sub>	October 2009
2008 Ozone	March 2011
2008 Lead (Pb)	October 2011
2010 NO <sub>2</sub>	January 2013
2010 SO <sub>2</sub>	June 2013
2012 PM <sub>2.5</sub>	Dec 2015

# Section 110 Multipollutant Guidance

- EPA has finalized the i-SIP guidance that covers the 2008 Ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, 2012 PM<sub>2.5</sub> and all future new or revised NAAQS
  - Will be revised or supplemented as needed
- Guidance on general issues
  - Severability of elements
  - Timing of the obligation for each element
  - Certification submittals
  - Public comment process
  - Parallel processing implications
  - Completeness
  - Effect of a pre-existing FIP
- Guidance on specific elements
  - Does not address interstate transport affecting attainment or maintenance of the NAAQS
  - Includes citations to recent EPA actions in specific states that involved issues that may also arise with other states going forward
- Status: Finalized Sept 2013

# SIP Call for SSM

- EPA proposed a SIP Call to 36 states in February 2013 concerning identified SIP provisions for treatment of excess emissions occurring during SSM
  - Extended comment period ended May 13, 2013
  - The proposal restated and invited public comment on EPA's SSM Policy
  - EPA proposed to allow the affected states 18 months after any SIP calls are final (the max allowed under the CAA) to correct and submit SIPs revisions
  - Link to EPA's webpage specific to this rule is at [www.epa.gov/airquality/urbanair/sipstatus](http://www.epa.gov/airquality/urbanair/sipstatus)



- U.S. Supreme Court granted EPA's petition for review of the D.C. Circuit's decision in *EME Homer City* which vacated CSAPR
  - Oral argument scheduled for December 10, 2013
- CSAPR focused on attainment and maintenance of the 1997 Ozone NAAQS, 1997 PM<sub>2.5</sub> NAAQS and 2006 PM<sub>2.5</sub> NAAQS
- EPA continues to move forward with the states to address transport for the newer NAAQS while pursuing the Supreme Court appeal

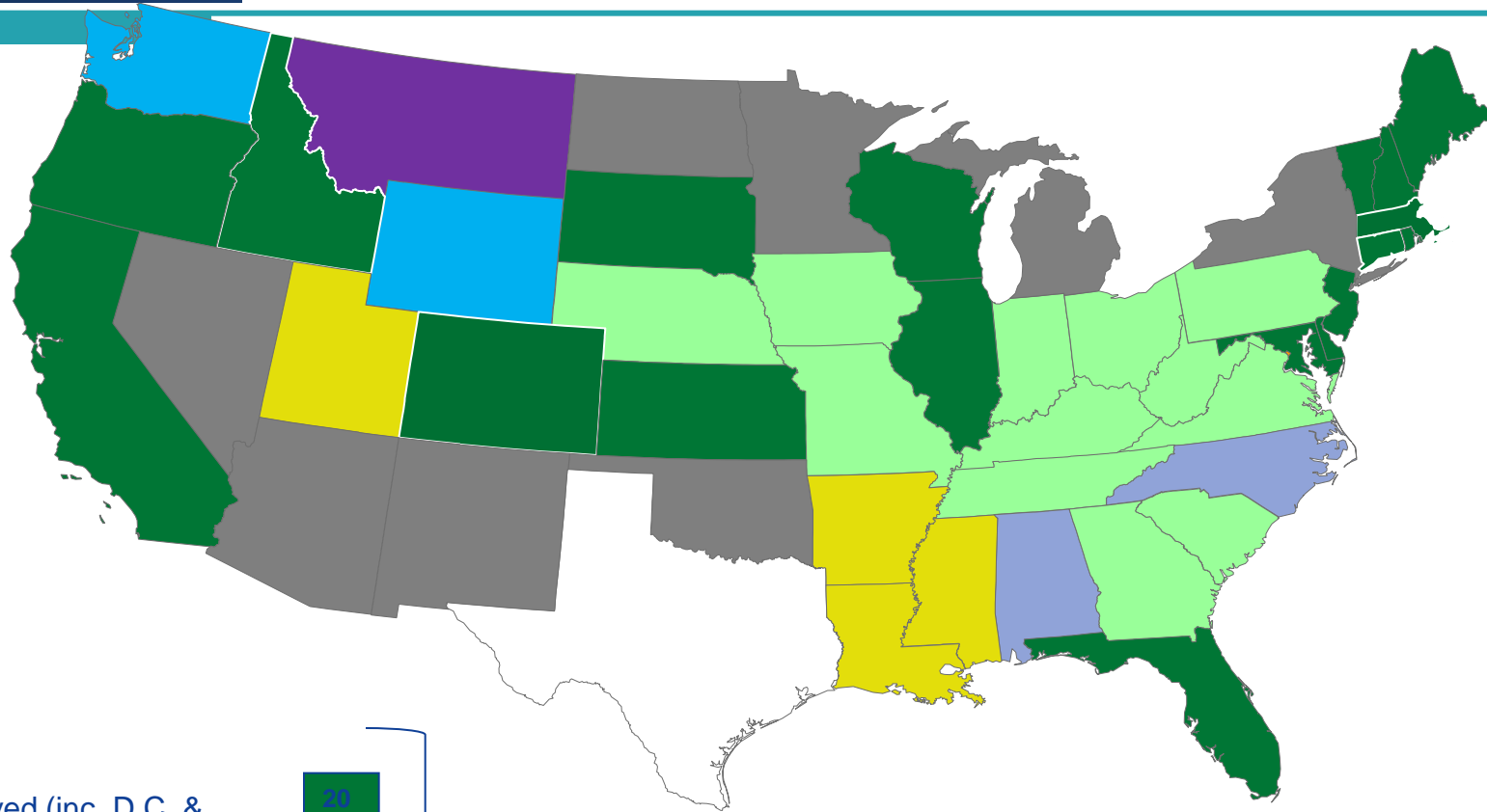
- Certain principles emerged from previous discussions with states
  - EPA' s efforts should be timely
  - EPA should focus on defining state obligations but provide states flexibility on implementation
  - Most pressing transport challenge appears to be ozone in eastern half of the U.S., particularly for the 2008 ozone standard
- EPA working to define upwind states' obligations under the 2008 ozone standard to address transport in eastern half of the U.S.
  - EPA will continue to work with western states through EPA Regions to address PM and ozone attainment challenges and assess need for a future transport rule addressing these issues
- EPA plans to stay engaged with states as we develop a proposal

# REGIONAL HAZE UPDATE

# Consent Decrees for Regional Haze

- Under the Regional Haze Consent Decree with the National Parks Conservation Association, we have taken 62 final actions since June 2011
  
- Only a few actions remain for addressing the requirements for the first 10-year implementation period, which ends in 2018:
  - Washington: propose partial SIP/partial FIP, November 15, 2013
  - Arizona: propose partial FIP, December 6, 2013
  - Wyoming: final November 21, 2013
  - Oklahoma and Texas: proposal May 15, 2014

# Current Status of Regional Haze SIP and FIP Actions



Approved (inc. D.C. & AK)

20

Approved + CSAPR FIP

12

Approved but needs CSAPR SIP within 2 years

2

SIP  
Approval  
Actions

Partial disapproval  
w/ 2-year FIP clock

4

Limited disapproval  
for CAIR. No other  
action.

1

Full FIP (MT & HI  
& VI)

3

Final Partial FIP\*  
(inc. FCPP)

9

Proposed Partial FIP\*

2

FIP  
Actions  
(\*status  
of rest  
of SIP  
varies)

# Related EPA Actions

- CSAPR Better-than-BART Rule (effective August 7, 2012)
  - Allows CSAPR states to meet the BART requirements for EGUs with CSAPR programs
  - Eleven states have partial “friendly” FIPs that substitute CSAPR trading programs for source-specific BART for EGUs, as applicable
  - Two states have FIP clocks running that are dependent on CSAPR
- Implications of the CSAPR Vacatur
  - Supreme Court has agreed to review the U.S. Court of Appeals for the D.C. Circuit’s decision in *EME Homer City Generation, L.P. v. EPA* (the CSAPR decision)
  - EPA is assessing potential paths to address these SIPs, FIPs and FIP clocks for the affected states, so that once the final outcome of the CSAPR litigation is known, EPA is positioned to consult quickly with states on appropriate paths forward

# Regional Haze SIPs – Periodic Review

- Periodic report describing progress toward reasonable progress goals and evaluation of adequacy of existing plan [ § 51.308(g) and § 51.309(d)(10)]
- Report is due 5 years from submittal of the initial SIP under 308 and in 2013 under 309, and must be in the form of a SIP revision
  - EPA is nearing completion on actions for North Carolina's and South Carolina's progress reports
  - 2013 for Utah, New Mexico, and Wyoming (under § 309)
  - Between 2013 and 2017 for the rest of the states depending on the SIP submittal date
- EPA issued guiding principles in April 2013 for review of 5-year reports

# Looking Forward: 2018 Regional Haze SIP Revisions

- A comprehensive SIP revision is due July 31, 2018, and must fully satisfy the Regional Haze Rule requirements, including revised reasonable progress goals, if necessary
- OAQPS is actively engaging the EPA Regional offices on lessons learned and how EPA can improve the Regional Haze Program for the next round of SIPs
  - Topics for discussion include national consistency issues, possible additional guidance, technical support needed and potential rule revisions
- We have met with WESTAR, FLMs and several environmental groups and will consider their input



# **GHG PERMITTING UPDATE**

# GHG Permitting Tailoring Rule Implementation Schedule

- **Step 1:** Sources already subject to PSD “anyway” and GHG emissions = or > than (tpy CO<sub>2</sub>e):

New source: NA

PSD Modification: 75,000

- **Step 2:** Step 1 plus sources with GHG emissions = or > than (tpy CO<sub>2</sub>e):

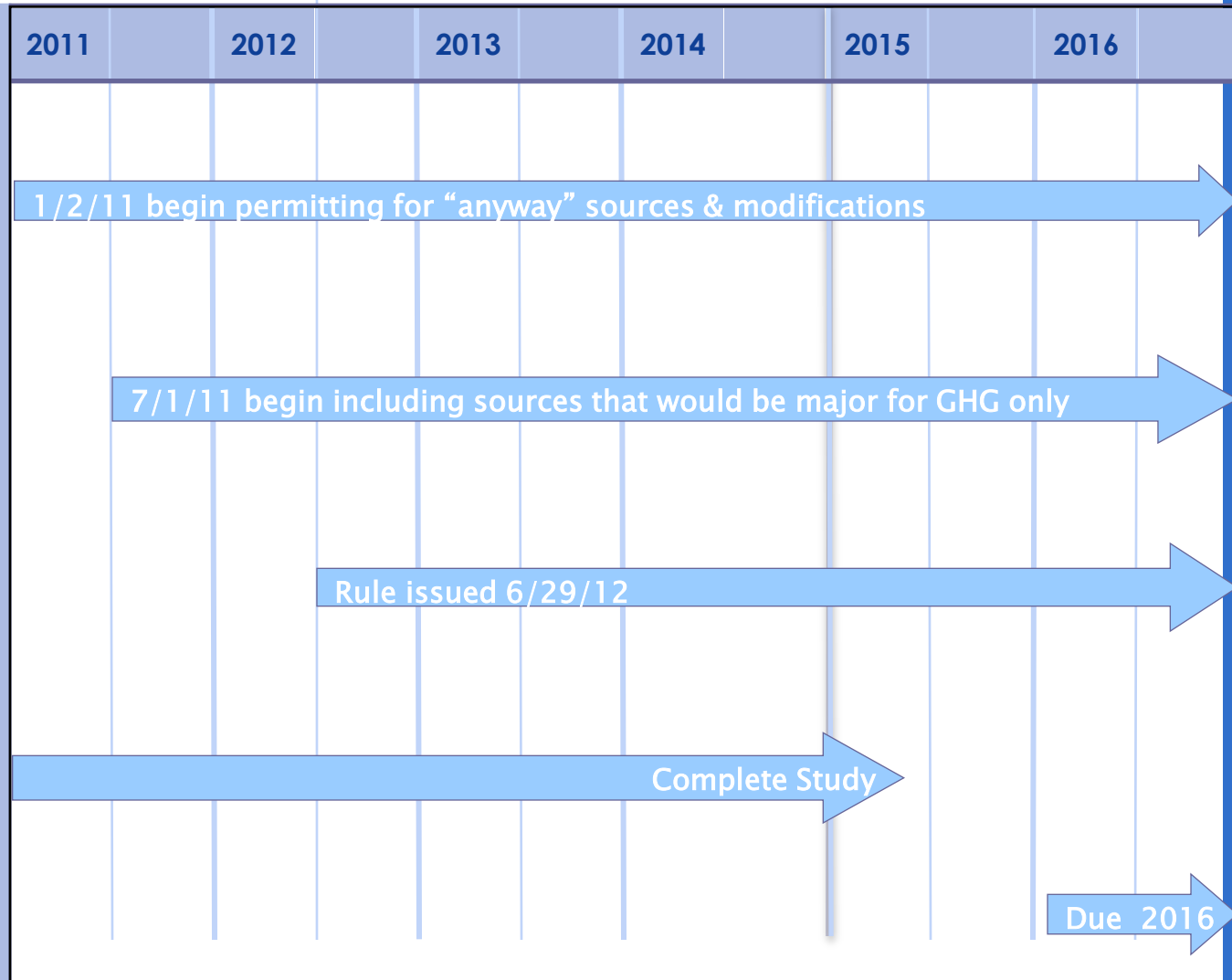
New source: 100,000

PSD Modification: 75,000

- **Step 3:** Maintains the thresholds from Step 1 and Step 2. Establishes additional PAL provisions to streamline the permitting process

- **5-year study:** To examine GHG permitting for smaller sources

- **Step 4:** Additional rulemaking based on 5-year study



# GHG Tailoring Rule Implementation

- Additional work/commitments include:
  - 5-year study due for completion in April 2015
  - Step 4 Rule due in April 2016
  - Actions to ensure implementation of the Tailoring Rule
    - Program Updates (SIP and Title V)
    - Streamlining Techniques Development
    - Title V Fees for GHGs
    - Approaches for treatment of Biogenic CO<sub>2</sub> emissions for permitting purposes

# GHG Permitting Five-Year Study

- As part of the Tailoring Rule, EPA made an enforceable commitment to conduct and complete a study by April 30, 2015
- In the Five-Year Study EPA will:
  - Project the GHG permitting administrative burdens that remain below Step 3 thresholds
  - Assess the permitting authorities ability to secure resources, hire and train staff for GHG permitting as well as experiences with GHG permitting
  - Assess the successes of streamlining measures adopted by the states to reduce permitting burden
- The study will help inform the Step 4 Rule due in April 2016

# GHG Permitting Five-Year Study: Data Collection

- Data on GHG permitting activity is needed for both PSD and Title V programs as part of the study
  - EPA HQ has asked EPA Regions to provide permitting information for GHGs
  - EPA is conducting a voluntary survey of 9 state/local permitting authorities to obtain additional permitting data

# GHG Streamlining Techniques Under Consideration

- EPA is considering CAAAC GHG Permit Streamlining Report released in September 2012 and reviewing approaches commented on in Tailoring Rule
  
- Techniques currently under consideration include:
  - Defining Potential to Emit (PTE) for various source categories
  - Establishing presumptive BACT
  - General permits and permits-by-rule
  - Electronic permitting and “lean” techniques
  - Creating GHG permitting authority to issue synthetic minor sources

# Tally of GHG PSD Permits (as of 9/16/13)

- **113 PSD permits with GHG limits have been issued**
  - 82 issued by states
  - 31 issued by EPA
  - About 50% are for new facilities and 50% for modifications
  
- **57 GHG-related PSD permit applications are currently being processed by EPA Regions**
  
- **EPA Comment Letters on GHG Permitting Actions**
  - <http://www.epa.gov/nsr/ghgcomment.html>

## Industry Breakdown of PSD Permits with GHG Limits

(in order by number of permits issued)

- Power Plants
- Chemical Plants
- Oil and gas projects (i.e., natural gas processing, LNG, OCS exploration)
- Cement Plants
- Iron and Steel Plants
- Wood Products facilities
- Nitrogen plants (fertilizer use)
- Ceramic/Proppant facilities
- Petroleum refineries
- Municipal Landfill (waste to energy projects)
- Ethanol plants
- Coal to Synthetic Natural Gas facility

# Adequate Basis for GHG BACT Decisions

- Initial permits failed to explain why the most energy efficient unit (e.g., turbine or boiler) was not selected as BACT and provided little basis for rejecting Carbon Capture and Storage (CCS)
- Some initial permits did not set a numerical GHG emissions limit, and did not explain why a numeric limit was technically or economically infeasible
  - This has improved recently in that almost all applicants are now proposing numerical limits
- Initial permits had little/no approach to GHG measurement
  - EPA established that direct measurement of CO<sub>2</sub> (e.g., CEMS) is preferred, but other viable approaches can also be used
- EPA continues to stress the importance of documenting of GHG control considerations and BACT limits



# Carbon Capture and Storage (CCS)

- Recent permits have viewed CCS as an available and technically feasible technology for facilities emitting CO<sub>2</sub> in large amounts
- Factors such as pipeline construction costs, energy requirement for capital equipment, and site-specific feasibility issues have prevented CCS from being selected as BACT in most cases
- Recent comments for public focusing more on CCS cost effectiveness

# Step 4 Rulemaking

- In the Tailoring Rule, EPA committed to:
  1. Complete a study by April 30, 2015, to evaluate the status of PSD and title V permitting for GHG-emitting sources, including progress in developing streamlining techniques; and
  2. Complete further rulemaking based on that study by April 30, 2016, to address the permitting of smaller sources. That rulemaking may also consider additional permanent exclusions based on the “absurd results” doctrine, where applicable.
- Also in the Tailoring Rule, we said our action in that rulemaking would address permitting requirements for smaller sources, taking into account the remaining problems concerning costs to sources and burdens to permitting authorities

# Status of GHG PSD and Title V Permitting Programs

- PSD Programs
  - 10 permitting authorities initially received FIPs
  - 9 states, 2 programs in Arizona
  - Only 3 states (TX, WY, FL) currently remain with GHG FIP
  - EPA continuing to work with permitting authorities to ensure PSD permitting program changes are processed in an efficient manner
  
- Title V Programs
  - EPA is working with Regional Offices to ensure states have adequate authority to implement Title V GHG programs

# Treatment of Biogenic CO<sub>2</sub> Emissions

- Treatment of Biogenic CO<sub>2</sub> Emissions for PSD and Title V Permitting Purposes
  - 3-year deferral was set to expire in July 2014
  - SAB completed its scientific analysis; provided EPA with report – September 28, 2012
  - On July 12, 2013, the D.C. Circuit Court of Appeals vacated EPA's July 2011 biogenic CO<sub>2</sub> deferral rule
  - The Court granted an extension to the date by which petitions for reconsideration are due, thus extending the issuance of the mandate making the Court's decision effective
  - EPA is already working with sources and permitting authorities to resolve source permitting and SIP issues as they are arising

# GWP & EGU NSPS Heads-Up

- Revision to Part 98 Global Warming Potential (GWP) values proposed in March 2013
  - Aligns Reporting Rule GWPs with IPCC's 2007 Report
  - Some GWP values would increase
    - Methane proposed to increase from 21 to 25
    - Nitrous Oxide and SF6 proposed to decrease
  - EPA received comments on the rule with respect to possible permitting implications and is working through the comments, preparing responses, and working on the final rule
    - Target date for final signature is October 2013
  
- NSPS Proposal for New Electric Generating Units

# TITLE V UPDATE

# CAAAC Title V Task Force

- “State of the Program” report issued after 10 years of implementation
  - Final report submitted to CAAAC in 2006
  - The final report listed 18 topic areas and made a total of 100 recommendations
- EPA reviewed the report and developed a list of priority recommendations
- NACAA also reviewed the Task Force report and provided recommendations to EPA for program improvements
  - NACAA’s recommendations were well aligned with the areas EPA identified for improvement

- The IG Report included a series of recommendations for improvement/clarification of the Title V Program
- Three of these recommendations are still unresolved:
  - “...develop and issue guidance or rulemaking on annual compliance certification content which requires responsible officials to certify compliance with all applicable terms and conditions of the permit, as appropriate.”
  - “...develop nationwide guidance or rulemaking, as appropriate, on the contents of statements of basis...”
  - “Issue the draft rule regarding intermittent versus continuous monitoring as it relates to annual compliance certifications and including credible evidence.”



# 2005 Inspector General Report

(cont.)

- In March 2013, EPA proposed changes to federal rules to amend the annual compliance certification requirements for state and federal operating permit programs to address IG recommendation
  - The proposal published on March 29, 2013
    - We received 7 comment letters and are working on the final package
  - EPA is working on a final rule to amend the compliance certification requirements for state and federal operating permit programs and response to comment
- EPA committed to develop a guidance document that addresses the recommendations on the contents of statement of basis and compliance certifications
  - EPA plans is to issue the guidance by the end of 2013

# NSR UPDATE

# Upcoming NSR Rules

- $PM_{2.5}$  Good Cause Final Rule to remove vacated elements of PSD regulations pursuant to January 22, 2013 court decision in Sierra Club v. EPA
- $PM_{2.5}$  SILs Reconsideration Rule

# PSD Applicability: Midwest Generation

## **U.S. v. Midwest Generation, 7<sup>th</sup> Cir., 12-1026 and 12-1051 7/8/2013**

- Commonwealth Edison modified 5 plants between 1994 and 1999 without obtaining PSD permits or installing BACT
- Commonwealth Edison sold the 5 plants to Midwest Generation
- EPA filed enforcement action alleging that the failure to get a permit/install BACT is an ongoing violation
- Court found that the requirement to get a permit/install BACT is subject to a 5-year statute of limitations and is not an ongoing violation

# PSD Applicability: Homer City

## **U.S. v. EME Homer City Generation, 3<sup>rd</sup> Cir., No. 11-4406**

**08/21/2013**

- Homer City (PA) plant built in the 1960' s by Penelec and NYSEG (grandfathered under PSD)
- Plant made changes from 1991 - 1996, without obtaining NSR permits. Owners believed the changes to be “routine maintenance” and exempt from permitting
- Owners applied for a title V permit in 1995 that did not include PSD/BACT conditions
- 1999 plant sold to Edison Mission Energy (EME Homer City)
- 2011 EPA sued the current and former owners, joined by NY, NJ and PA
- Appeals court upheld the District Court' s determination that the 5-year statute of limitations had expired on the civil penalty PSD claims against the current owner

# SIP REFORM UPDATE

# Focus of SIP Reform Efforts

## **Guiding Principle: Early Air Agency Engagement - No Surprises!**

- Rule and Guidance Management – EPA issues timely and effective NAAQS-related rules, guidance, and other tools needed for air agencies to meet their Clean Air Act responsibilities
- SIP Backlog Reduction and Improved SIP Processing
  - SIP approval decisions are consistent between EPA Regions and made within Clean Air Act timeframes
  - SIP backlog is reduced and future SIPs are processed in timely manner
- Continue to make progress on list of 13 SIP Reform requests from ECOS/NACAA

# State/EPA FCAP Subgroups

## Planned Work Products for PM<sub>2.5</sub> FCAP Subgroups

- Technical Subgroup
  - Roadmap for state input to modeling and inventory guidance
  - Timely issuance of guidance
- SIP Processing Subgroup
  - Recommendations for creating opportunities for meaningful communication
  - Recommendations for engaging in approvability discussions during the SIP development process
  - Best practices for establishing roles and responsibilities in attainment demonstration SIP planning (to be developed)
  - Tools to aid air agencies in developing and submitting approvable SIPs on time
    - Template or checklist for infrastructure SIP submission
    - Template or guidance for attainment demonstration (what analysis and tools should be used in the SIP and what the minimum requirements are that the SIP should contain)
  - Tools to aid EPA Regions in timely and consistent (within reason) review of SIP submissions



# Rules and Guidance Update

- 2008 Ozone NAAQS
- 2010 SO<sub>2</sub> NAAQS
- 2012 PM<sub>2.5</sub> NAAQS
- Exceptional Events
- Infrastructure SIP Guidance
- Regional Haze Guidance

*For more information see Appendix*

# Target Schedule for NAAQS Implementation Rules/Guidance/Tools

Action	After NAAQS Promulgation
EPA issues PSD guidance or rule*	Upon promulgation (for necessary PSD measures)**
EPA issues Designations guidance	4 months
<i>States submit Designation recommendations</i>	<i>1 year</i>
EPA issues Infrastructure guidance and/or Transport Rule	Up to 1 year
EPA issues proposed nonattainment area SIP rules or guidance	1 year
EPA finalizes designations (and classifications where appropriate)	2 years***
EPA issues NSR and/or conformity rule/ guidance if needed	2 years***
EPA issues final nonattainment area SIP rules or guidance (including emission inventory, modeling guidance, and any nonattainment NSR provisions)	2 years***
EPA and/or air agencies issue final SIP templates, toolkits, etc. to assist states with development of nonattainment area plans	2 years***
<i>States submit Infrastructure and Transport SIPs</i>	<i>3 years</i>
<i>States submit Attainment plans</i>	<i>3.5 to 5 years</i>

\*Includes transition provisions, emissions estimation/source testing provisions, permit modeling, screening tools (SER, SIL, other), increments, and precursor implementation.

\*\*Timing for other guidance/rules depends on the CAA requirements for the NAAQS.

\*\*\*Designations can be finalized in 3 years under certain circumstances.

# Efforts to Address SIP Backlog and Improve SIP Processing

- NACAA/ECOS and EPA are having focused discussions through the SIP Reform Workgroup (SRWG) to address SIP backlog and improve SIP processing
  
- Main themes of these discussions include:
  - Developing and implementing best practices and tools developed through FCAP to facilitate SIP processing
  - Increasing transparency of SIP data and evaluating additional improvements to AirTrax that could be of assistance to states
  - Developing joint state-region plans to reduce the number of SIPs pending before an EPA Region within a certain time frame

# e-SIP Submittal Pilot Project

- Provide a system where states can submit an e-SIP and the EPA Regions retrieve the SIP
  - **Goal:** To replace the paper copy, but EPA would like states participation in piloting the system first
  - **Pilot:** The state will continue to submit one paper copy of the SIP submission as the official SIP
  - **Length of pilot:** Approximately 6 months to 1 year (to be determined by the pilot group).
  - **Level of State participation:** Conference calls and emails to get feedback from eSIP users 2x per month
  
- Next Steps:
  - Launch eSIP system pilot in early in 2014
  - Hold a state and EPA Regional meeting to discuss expectations and process for the pilot
  - States that plan to participate are: AL, AR, GA, KS, KY, LA, MO, MS, MT, NC, NH, SC, and VA

# QUESTIONS OR COMMENTS



# APPENDIX

# Rules and Guidance Update

- **2008 Ozone NAAQS**
  - Rule: Implementation of the 2008 NAAQS for Ozone State Implementation Plan Requirements
  
- **2010 SO<sub>2</sub> NAAQS**
  - Guidance: SO<sub>2</sub> Nonattainment Area Implementation Requirements
  - Technical Assistance Document for SO<sub>2</sub> Air Quality Modeling in Support of Designations
  - Technical Assistance Document for SO<sub>2</sub> Air Quality Monitoring in Support of Designations
  - Rule: Data Requirements for Air Quality Modeling and Monitoring for Designations

*NOTE: Not a comprehensive list of completed, planned or ongoing rulemakings/guidances*

# Rule and Guidance Management

- **2012 PM<sub>2.5</sub> NAAQS**
  - Guidance: Area Designations for the 2012 Revised PM<sub>2.5</sub> NAAQS
  - Guidance: PM<sub>2.5</sub> Permit Modeling
  - Rule: PM<sub>2.5</sub> Nonattainment Area Implementation Requirements
  - PM<sub>2.5</sub> Good Cause Final Rule to remove vacated SMCs
  - PM<sub>2.5</sub> SILs Reconsideration Rule
  - (Revised) Guidance on the Use of Models and Other Analyses for Demonstrating Attainment for Air Quality Goals for O<sub>3</sub>, PM<sub>2.5</sub> and Regional Haze
  - (Revised) Guidance: Emission Inventory Guidance for Implementation of O<sub>3</sub> and PM<sub>2.5</sub> NAAQS and Regional Haze Regulations



# Rule and Guidance Update

- **Exceptional Events**
  - Interim Exceptional Events Guidance to clarify key provisions of the 2007 Exceptional Events Rule.
  - Supplemental Exceptional Events Guidance re: Wildfire/Ozone Events
  - Rule: Revisions to the 2007 Exceptional Events Rule
  
- **Guidance: Infrastructure State Implementation Plan Elements Under Clean Air Act Sections 110(a)(1) and 110(a)(2)**
  
- **Regional Haze: Guidance - General Principles for the 5-Year Regional Haze Progress Reports for the Initial Regional Haze State Implementation Plans (Intended to Assist States and EPA Regional Offices in Development and Review of the Progress Report)**

*NOTE: Not a comprehensive list of completed, planned or ongoing rulemakings/guidances*

## List of 13 SIP Reform Requests from ECOS/NACAA: Completed Items

- **2. Facilitate redesignations and maintenance plan submittals by eliminating unnecessary documentation**
- **8. Allow letter approval or certifications for minor SIP revisions**
- **11. Allow states to determine the most appropriate mechanisms for seeking comment from the public about SIP amendments (including whether or not to hold a hearing and the possibility of using online methods of notice)**
- All three were addressed through SIP Consistency Memo (McCabe, 4/6/11) which addresses state submittal requirements

## List of 13 SIP Reform Requests from ECOS/NACAA: Ongoing Items

- **1. Assure that EPA guidance is issued in time for state and local agencies to use in developing their plans**
  - The Full Cycle Analysis Project (FCAP) is working with states to address this
  - EPA has been engaging the states on guidance and rulemakings
- **3. Develop and institute regional approaches to SIP planning**
  - SIP Consistency Memo (Janet McCabe, 4/6/11)
  - Focusing on consistency across EPA Regions (i.e., model language for notices)
  - Some EPA Regions have begun to review early drafts of SIPs
- **4. Promote weight-of-evidence demonstrations**
  - Working on revised version of photochemical modeling guidance, including chapter on weight-of-evidence

# List of 13 SIP Reform Requests from ECOS/NACAA: Ongoing Items (con' t)

## ■ **6. Improve communications**

- Improved communication with states through the FCAP subgroups, NAAQS Implementation Webinars, Monthly NACAA Criteria Pollutant and Permitting calls, etc.
- Providing more opportunities for air agencies to provide input and feedback on draft guidance
- Use of AirShare to solicit input and share info
- Several Regions are doing SIP Kaizen-like efforts with states to improve communications (e.g., NOI posted on website and updated)

## ■ **7. Create a protocol/checklist for the development of attainment SIPs**

- FCAP SIP processing subgroup is working on developing protocols and checklists
- Completed a Menu of Control Measures to provide info for developing local emission reduction and NAAQS SIP scenarios
- Working on pollutant-specific NAAQS SIP Toolkits

## List of 13 SIP Reform Requests from ECOS/NACAA: Ongoing Items (con' t)

- **10. Provide training to assist states developing nonattainment SIPs and train EPA personnel**
  - Developing new training and updating existing training
  - Conducting webinars during comment periods to facilitate more meaningful comments
- **12. Accept electronic SIP submittals instead of requiring multiple hard copies**
  - Developing a fully electronic submittal process to remove the requirement for hard copies
- **13. Create an online clearinghouse of approved SIPs and an online SIP-tracking database for SIP submittals**
  - EPA Regions moving towards making their systems work together

# List of 13 SIP Reform Requests from ECOS/NACAA: On Hold Items

- **5. To the extent possible, align SIP submittal dates for various pollutants**
  - CAA dates and states' desire not to accelerate submission dates make this difficult within existing structure of the Act
  
- **9. Simplify the reporting process for innovative and voluntary measures**
  - EPA has addressed specific processes raised by states such as developing an Energy Efficiency and Renewable Energy Manual (published July 2012)
  - Awaiting additional input from states on other specific measures needing simplification or clarification