

Alabama

In this issue:

Greetings from the Chair	1
Alabama: The Good Neighbor	2-3
Port Tour and Dinner Meeting	4-5
Upcoming Events	6

Greetings from the Chair

Heather Jones

The Alabama Chapter of AWMA had a slow start, but things are starting to pick up. We just hosted our first of hopefully several dinner meetings for the year in Mobile. Thanks to all of you that attended. Looking forward, we are ramping up our plans for this year's Regulatory Update that is scheduled for August. We are hoping to make it a very enriching experience by providing updates on those topics that are most impactful to our membership. In addition, we hope to have a networking dinner to piggyback off of the Update. We are very interested to hear from you to find out what we can bring to the Regulatory Update or what we can provide to the membership as a whole. I hope you all have a wonderful summer.





Alabama: the Good Neighbor

By Julia Barber*

The Clean Air Act imposes certain obligations on states to ensure they are acting as a “good neighbor.” However, determining whether a state is satisfying its “good neighbor” requirements in the eyes of the Clean Air Act is not a straightforward analysis.

Specifically, the Clean Air Act directs states to develop and implement a state implementation plan (SIP) that prohibits “any source or other type of emissions activity” in the State from “contribut[ing] significantly to nonattainment in” or “interfere[ing] with maintenance” of any national ambient air quality standards (NAAQS) in another state (42 U.S.C. § 7410(a)(2)(D)(i)). Accordingly, when a new or revised NAAQS is promulgated, states must ensure their SIP adequately addresses Section 110(a)(2)(D)(i) of the Clean Air Act, commonly referred to as the “good neighbor provision.”

In 2015, EPA finalized its review of the NAAQS for ozone, lowering the primary and secondary standards from 75 parts per billion (ppb) to 70 ppb based on an eight-hour averaging period (80 Fed. Reg. 65,292 (Oct. 26, 2015)). As a result, states must now ensure their SIPs address the good neighbor provision in light of this new, lower standard.

EPA has described the good neighbor provision as involving a 4-step framework to address “upwind” state obligations. This 4-step framework requires EPA and the states to: (1) identify areas expected to have problems attaining or maintaining the NAAQS; (2) identify upwind states that contribute to those areas that are expected to have problems; (3) identify emission reductions necessary to eliminate the upwind state’s “significant contribution,” considering cost and other factors; and (4) adopt measures to achieve those reductions (EPA’s August 31, 2018 Memo at 2).

Importantly, EPA has historically identified a screening threshold to determine whether sources in a state are contributing to or interfering with a nonattainment or maintenance area in accordance with the framework. For example, in the Cross-State Air Pollution Rule (CSAPR), EPA established a threshold of 1 percent; therefore, if the cumulative emissions from any upwind state’s sources contributed less than one percent of the NAAQS to any downwind nonattainment or maintenance area, the upwind state was excluded from further analysis under the 4-step framework (76 Fed. Reg. 48,208 (Aug. 8, 2011)). In 2014, the Supreme Court of the United States found EPA’s reliance on this screening threshold in conjunction with a cost threshold to be an appropriate method for determining what constitutes a “significant contribution” that must be addressed under the good neighbor provision (*EPA v. EME Homer City Generation, LP*, 572 U.S. 489 (2014)).

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Alabama: the Good Neighbor (cont'd from previous page)

Although the Supreme Court approved of the screening threshold approach used in CSAPR, in a memorandum issued by EPA in August 2018, EPA explained that each time it “sets a new or revised NAAQS, states and EPA can evaluate collective contribution to identify an appropriate threshold for that NAAQS” (EPA Memo at 2). Therefore, according to EPA, the level of the screening threshold included in the Supreme Court’s analysis is not set in stone, but is subject to the judgment of the Agency.

With respect to the 2015 ozone NAAQS, EPA has *not* promulgated a regulation identifying a screening threshold to be used in the good neighbor provision’s 4-step framework. Instead, EPA put forth a memorandum analyzing both a screening threshold of 1 percent of the NAAQS (*i.e.*, 0.70 ppb), as well as two alternative thresholds of 1 ppb and 2 ppb. Based on this analysis, EPA concluded that a threshold of 1 ppb “may be reasonable and appropriate” for states to use to develop SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS” (EPA Memo at 4). Numerous states have provided submittals to EPA to either demonstrate that their SIPs adequately address the good neighbor provision for the 2015 ozone NAAQS or to revise their SIPs to ensure the good neighbor provision is addressed. However, EPA’s website indicates that only one state’s SIP has received final approval at this point, and that state’s contribution was significantly below all three identified screening thresholds. Therefore, it remains to be seen whether a screening threshold of 1 ppb in this scenario would be upheld in court. Nonetheless, EPA’s analysis shows that Alabama’s contribution to downwind states’ nonattainment or maintenance does not exceed any of the identified screening thresholds, and, therefore, further reductions from Alabama sources may not be necessary for compliance with the good neighbor provision with respect to the 2015 ozone NAAQS.

For additional information from EPA regarding SIP revisions for the 2015 Ozone NAAQS, below is EPA’s website with memoranda and other documents related to this topic and its website compiling SIP submittals:

<https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>

<https://www3.epa.gov/airquality/urbanair/sipstatus/reports/x110a2ozone2015section110a2di-i-prong1interstatetransport-significantcontributioninbystate.html>

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Port Tour and Dinner Meeting

By Tim Martin

The Alabama Chapter's first dinner meeting and tour for 2019 was held in Mobile, Alabama. The tour portion of the evening was hosted by Judith Adams, Vice President of Marketing at the Alabama State Port Authority. She has presented at both the Coastal Plains AWMA meeting in Florida as well as the AWMA Southern Section meeting in Huntsville, Alabama. After hearing so



many good things at the meetings, it was great to see the port first-hand. The port handles imports as well as exports for many companies around the world. Shipping by containers has become a more affordable way to transport goods. Through the tour, we were able to see several of the efficiency projects the port has undertaken to remain competitive. The Mobile Port is rated the 11th most active port in the U.S. It has been as high as 9th and as low as 14th over the years. Due to its automation,

Mobile is one of the most desired and popular ports to use in the U.S. The Mobile port is the 3rd most automated port in the U.S. This automated process allows for quick check-in, drop off, and pickup, while many other ports may take as long as an hour just to check in. Time is money and the port strives to become more efficient to maintain and increase business at the port. Judith took us through the container yard where anything from cars, frozen food, wine, lumber, and even hazardous materials



may be shipped by boat. The Mobile port is also popular because of the modes of transportation available once the containers arrive. Rail, ground transportation via the interstate, and additional water transport are easily assessable through the port. We were able to tour a warehouse where lumber is stored for many different lumber companies waiting to be shipped out and to see automotive grade steel being loaded for ground transportation to manufacturers and other companies such as GE. The final stop was at one of the last remaining non-automated points at the port

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Port Tour and Dinner Meeting

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where food was flash frozen, loaded by hand to a crane, and then unloaded to a boat for shipping. We were able to hear about so many changes underway and just ahead to improve the port. They are currently widening the channel to accommodate barges that have increased in size over the years. This widening will help to alleviate some depth issues as well as allow some of the larger traffic to pass in opposite directions. It is expected that with these improvements and continued automation the Alabama State Port Authority will continue to thrive. Following the tour, those in attendance, had dinner at Ed's Seafood Shack. This was a great networking dinner and provided an opportunity to meet more of our Mobile members.



We want to hear from you! If you have any ideas for dinner meetings or social events, training, or Regulatory Update agenda items, please contact Lisa Cole (lbcole@adem.alabama.gov) or Anna Wood (alwatkins@adem.alabama.gov).





June 7, 2019

A&WMA Coastal Plains Joint FL/AL Technical Conference

Pensacola, FL

www.flawma.org/chapters/coastal-plains/events

August 22, 2019

Air & Waste Regulatory Update

RSA Activity Center

Montgomery, AL

More information to come!!

September 11-13, 2019

2019 Southern Section AWMA

Annual Meeting

Callaway Gardens

Pine Mountain, GA

<https://www.gaawma.org/>

ENJOY YOUR SUMMER!!