



Busy Skies – Federal Air Regulatory Developments – Grady Moore

A&WMA Southern Section 2023 Annual Conference

BALCH
& BINGHAM LLP

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Busy Skies – Federal Air Regulatory Developments

- Regulatory Actions
- What's in Court
- Legal threads

Regulatory Actions

- Minor Source Permitting
- NAAQS
- MM2A
- NESHAP Surrogates
- AERR
- GHGs

Minor Source Permitting

- EPA expected to issue new rules (or guidance) governing minor source permitting
- These could mean significant changes to state minor source permitting
 - Additional public review
 - Additional analysis
 - Additional reporting
- Many more minor source permits are issued than major source permits
- Many companies handle minor source permitting on their own, without the assistance of consultants or outside counsel

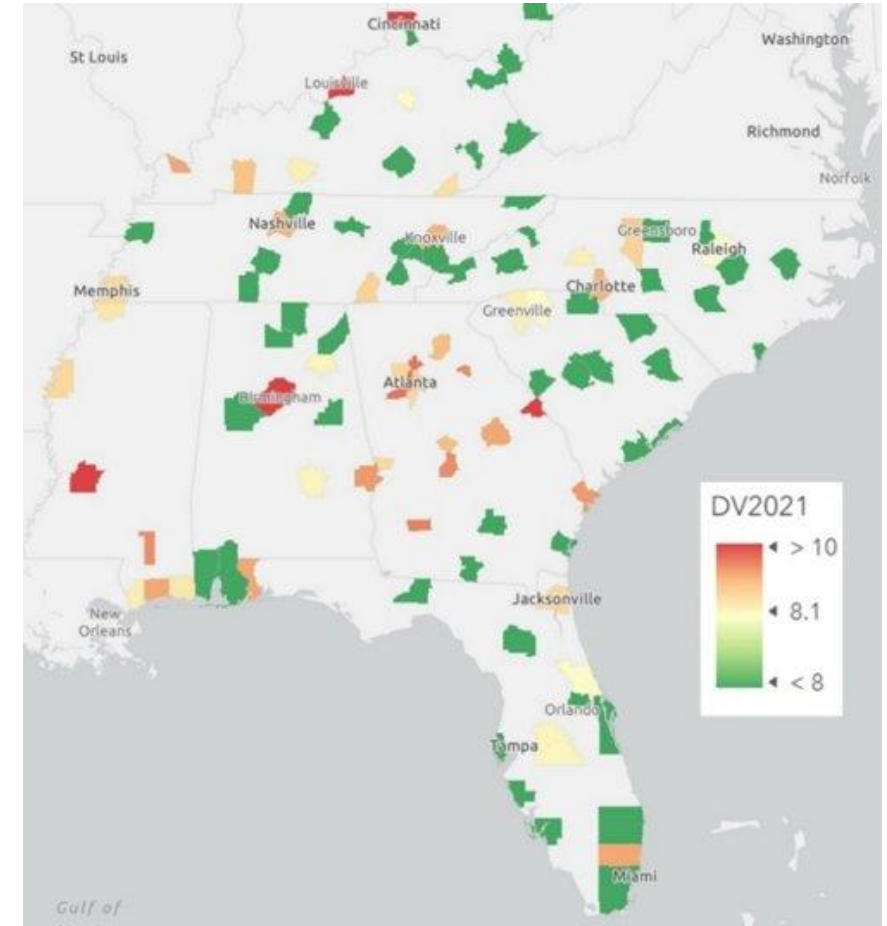
PM_{2.5} NAAQS

Potential Annual
PM_{2.5} Standard (ppb)

Above Alternative
Standards

Areas Affected

11.0	1	Georgia and South Carolina (multi-state, one monitor in Augusta, GA)
10.0	5*	Alabama, Georgia, Kentucky, Mississippi, and South Carolina
9.0	25	All Region 4 states
8.0	61**	All Region 4 states



Ozone NAAQS Review

- In 2015, EPA revised the ozone standard to 70 ppm
- In 2020 and 2021, EPA went back and forth on whether to retain that stringency
- August 21, 2023: EPA responds to CASAC assessment by announcing a new Ozone NAAQS review
- August 2023: Call for information in the FR
- Spring 2024: public science and policy workshop
- Fall 2024: Publish Integrated Review Plan to guide development of the Integrated Science Assessment

MM2A

- Section 112 distinguishes between major and area sources of HAP
- Major = any source “that emits or has the potential to emit considering controls”
- Area = “not major”
- 1995 OIAI policy
- 2020 MM2A rule – “plain language”
- EPA reconsideration forthcoming

NESHAP Surrogates

- “Mercury and Air Toxics Standards”
 - “Appropriate and necessary” to regulate HAPs from power plants
 - March 6, 2023 final rule reinstating “appropriate and necessary” finding for HAPs from EGUs
- April 5, 2023 proposed MATS RTR
 - More stringent emission limits
 - RTR for surrogates?

AERR

- Proposed July 25, 2003
- Comments due October 18, 2023
- Not just technical platform
- Expands reporting and applicability

Section 111 (again)

- In May, EPA proposed its third effort at regulating GHGs from power plants under section 111
- Existing coal and large gas plants must retrofit with CCS by 2030/2035 or limit operations and retire by 2032 to 2040.
- New gas must install CCS or hydrogen from renewables.
- What is EPA's authority to INdirectly re-structure the electric grid?
- How far ahead can EPA project the development of technology and infrastructure to set standards?
- What power does EPA have to limit state authority?

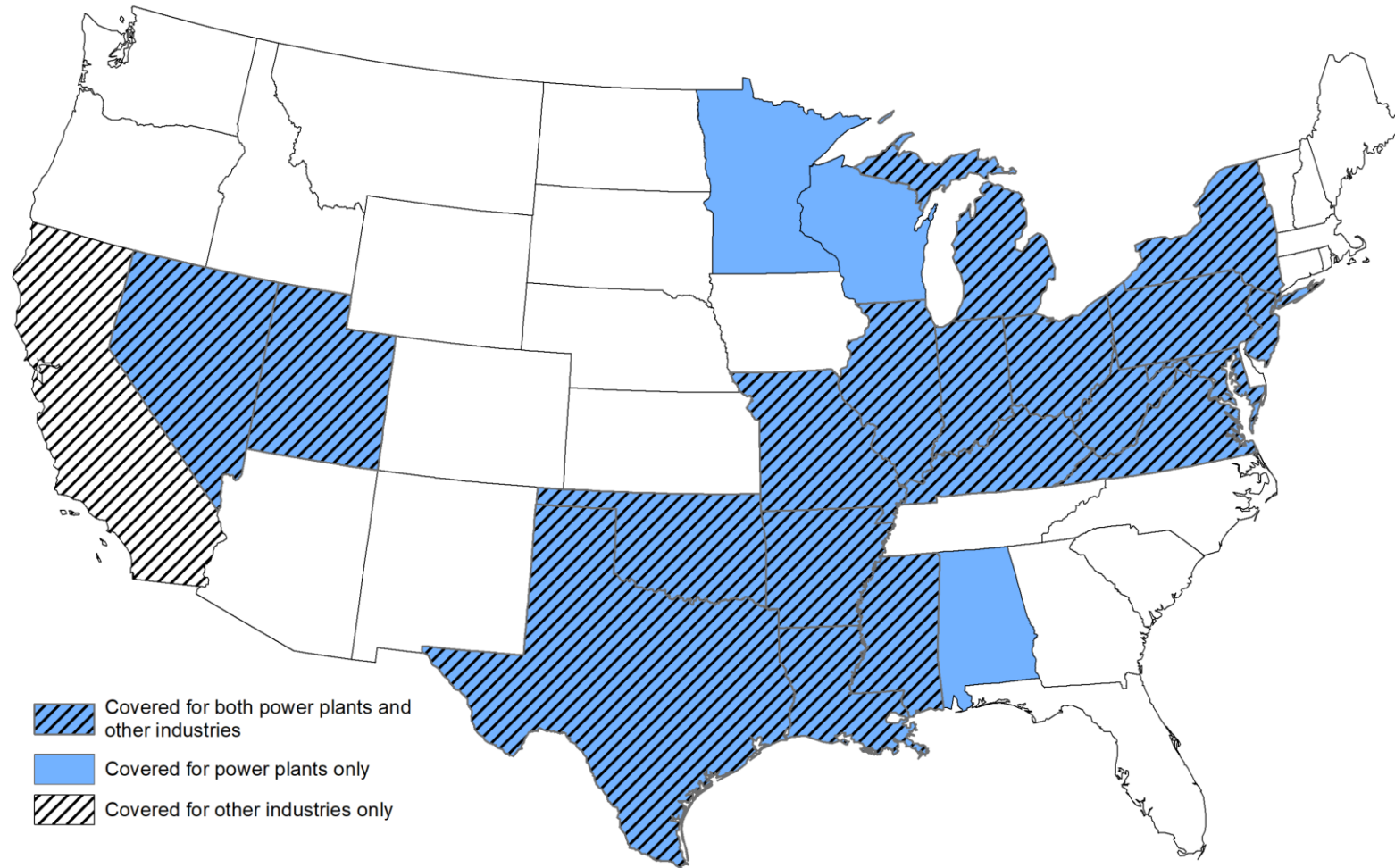
What's in Court

- Good Neighbor SIPs
- SSM

EPA Review of SIPs

- Background on Good Neighbor Provision
- Can states define “significant contribution”?
- Stays issued by multiple courts for multiple states (AL and MS)
- Briefing Ongoing
- What role does EPA have in reviewing the state’s assessment?
- Mostly about how determinative EPA modeling results are when there is no statutory bright-line to follow

Good Neighbor Plan for 2015 Ozone NAAQS



SSM

- “Startup, shutdown, and malfunction”
- History
 - 2015 guidance and SIP Call
 - 2020 guidance and SIP Call withdrawals
 - Reinstate 2015 guidance
- D.C. Circuit Litigation (argument March 2022)
- What standard for a SIP Call?

Thank You!
Grady Moore