

UPDATE ON EPA'S CSAPR RULE & FINAL GNP

MWAQC-TAC

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Background

- On February 13, 2023, EPA published a final action fully or partially disapproving SIPs submitted by 21 states to address the states' obligations under the Clean Air Act's good neighbor provision, with respect to the 2015 ozone NAAQS.
- Following that action, on March 15, 2023, EPA signed a separate final action, the Federal 'Good Neighbor Plan' (GNP) for the 2015 Ozone NAAQS, establishing federal implementation plan (FIP) requirements to address the states' good neighbor obligations.

GNP Background

- On March 15, 2023, EPA issued its final Good Neighbor Plan (GNP).
- The GNP ensures that 23 states meet the Clean Air Act’s “Good Neighbor” requirements by reducing pollution that significantly contributes to problems attaining and maintaining EPA’s health-based air quality standard for ground-level ozone (2015 Ozone NAAQS) in downwind states.
- The final GNP ensures that emissions reductions will happen as quickly as possible and be aligned with Clean Air Act deadlines for states to achieve the 2015 ozone NAAQS – which vary according to the severity of nonattainment.

GNP Background

- The GNP was published in the Federal Register on June 5 and has an effective date of August 4, 2023.
- EPA has issued prorated state and unit-level [budgets](#) for the GNP's control period (August 4 -September 30) in 2023.
- State budgets under the Cross-State Air Pollution Rule (CSAPR) for May 1 to August 3 are added to the GNP budgets from August 4 to September 30.

EPA Response to Judicial Stay Orders

- In May 2023, the United States Courts of Appeals for the Fifth and Eighth Circuits issued orders staying, pending judicial review, EPA's SIP disapproval action with respect to the SIPs submitted by Arkansas, Louisiana, Missouri, and Texas.
- The United States Court of Appeals for the Sixth Circuit issued an administrative stay of EPA's SIP disapproval, staying EPA's action with respect to the SIP submitted by Kentucky.
- EPA's authority to establish the GNP's requirements for sources in Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Texas stems from the disapproval of the states' SIPs.

EPA Response to Judicial Stay Orders

- EPA is amending the GNP on an interim basis to implement the orders and stay the rule's requirements to mitigate interstate air pollution with respect to the 2015 ozone NAAQS for facilities in Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Texas when those requirements go into effect for facilities in other states on August 4, 2023. This action also ensures that facilities in these states will continue to be subject to previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS.

EPA Response to Judicial Stay Orders

- This stay of the GNP as to these states will remain in effect until EPA takes subsequent action upon the resolution of litigation over its disapproval of these states' SIP revisions submitted to address good neighbor obligations for the 2015 ozone NAAQS. Facilities in these six states will be subject to requirements promulgated in prior good neighbor rulemakings to address the transport of smog-forming air pollution for the 1997 and 2008 ozone NAAQS. For remaining states, the Good Neighbor Plan will go into effect on August 4, 2023.



Impacts of Stays on GNP

- EPA's authority and obligation under the Clean Air Act to establish the GNP's FIP requirements for the sources in a given state is triggered by EPA's disapproval of the state's good neighbor SIP that does not meet the requirements of the Act and/or from EPA's finding of the state's failure to submit such a SIP by the statutory deadline for doing so.
- Accordingly, EPA must act to ensure that the GNP's requirements will not take effect for power plants or industrial sources in the six listed states while a stay of the SIP Disapproval action as to that state remains in place. EPA released a memorandum on June 1, 2023 stating that the Agency would take such action. This action suspends the Good Neighbor Plan requirements in those states.

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- Accordingly, EPA must act to ensure that the GNP's requirements will not take effect for power plants or industrial sources in the six listed states while a stay of the SIP Disapproval action as to that state remains in place. EPA released a memorandum on June 1, 2023, stating that the Agency would take such action. EPA released an interim final rule on June 29, 2023, that suspends the GNP requirements in those states.

What's Next?

- The interim final rule will ensure that sources in these states will continue to be subject to previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS while EPA's action disapproving these SIPs is stayed.
- For power plants, EPA and states use allowance trading programs to implement the required emission reductions.
- For power plants in Arkansas, Mississippi, Missouri, and Texas, which before the GNP were covered by the "Group 2" trading program, the revisions will maintain the state emissions budgets, unit-level allowance allocation provisions, and banked allowance holdings reflecting the status quo for the power plants in these states under the Group 2 trading program that was promulgated in the 2016 CSAPR Update.

What's Next?

- For power plants in Kentucky and Louisiana, which before the GNP were already covered by the Group 3 trading program as promulgated in the 2021 Revised CSAPR Update, the revisions in this action transfer the power plants to the Group 2 trading program but modify the trading program regulations as to these two states to maintain state emissions budgets, unit-level allowance allocation provisions, and banked allowance holdings reflecting the status quo for the power plants in these states under the Group 3 trading program that was promulgated in the Revised CSAPR Update.
- To preserve status quo boundaries between trading groups, this action also makes the allowances that Kentucky and Louisiana power plants will use for compliance in the Group 2 trading program non-interchangeable with the allowances that power plants in other states will use for compliance in the Group 2 trading program.

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