

Industry Organization Challenges EPA Cross State Air Pollution Rule

Publications

July 1, 2021

As the saying goes, “no good neighbor rule goes unpunished.” Thus, the latest attempt by the U.S. Environmental Protection Agency (“EPA”) to promulgate a Revised Cross-State Air Pollution Rule (“CSAPR”) Update under the “good neighbor provision” of the Clean Air Act and in response to the D.C. Circuit’s remand of the previous version of the CSAPR Update has been challenged in court. On June 25, 2021, Midwest Ozone Group—an affiliation of companies, trade organizations, and associations created to advance its members interests regarding national ambient air quality programs—filed a petition for review of the final rule of EPA published in the Federal Register at 86 Fed. Reg. 23,054 (April 30, 2021) entitled the “Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS.” The petition does not provide any details at this point regarding the basis for the group’s challenge to the Revised CSAPR Update.

As we previously reported on this [Blog](#), the Revised CSAPR Update became effective 60 days after it was published (effective on June 29, 2021), and has requirements that begin right away in the 2021 ozone season (the ozone season is May 1 through September 30). The rule requires additional emissions reductions of nitrogen oxides (“NO_x”) from power plants in 12 states: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. EPA determined that additional emissions reductions were necessary in these 12 states because projected 2021 ozone season NO_x emissions from these states were found to significantly contribute to downwind states’ nonattainment and/or maintenance problems for the 2008 ozone National Ambient Air Quality Standards (“NAAQS”). NO_x is an ozone precursor, which can react with other ozone precursors in the atmosphere to create ground-level ozone pollution (a/k/a smog). These pollutants can travel great distances, often crossing state lines and making it difficult for downwind states to meet or maintain the ozone NAAQS.

One part of the Revised CSAPR Update that may be of particular interest to the challengers is that EPA issued new or amended Federal Implementation Plans (“FIPs”) for these 12 states that replaces those states’ existing CSAPR emissions budgets for power plants. The revised emission budgets take effect immediately with the 2021 ozone season and will adjust through 2024. The 2021 emission budgets will require power plants in these states to take advantage of existing, already-installed selective catalytic reduction (“SCR”) and selective non-catalytic reduction (“SNCR”)

controls. Emissions reductions in the 2022 budgets will require installation or upgrade of state-of-the-art NO_x combustion controls at power plants. Emission budgets will continue to be adjusted, through 2024, until air quality projections demonstrate that the upwind states are no longer significantly contributing to downwind states' nonattainment of the 2008 ozone NAAQS.

Midwest Ozone Group is required to submit a Statement of Issues to be Raised by July 28, 2021, which should shed more light on the strengths or weaknesses of the petitioner's challenges to this rule. Stay tuned to the [Corporate Environmental Lawyer Blog](#) for additional analysis at that time and if any other significant developments arise in the meantime.

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed

