INSTITUTE OF PUBLIC UTILITIES

ENVIRONMENTAL REGULATION: CLIMATE AND AIR POLLUTION POLICY

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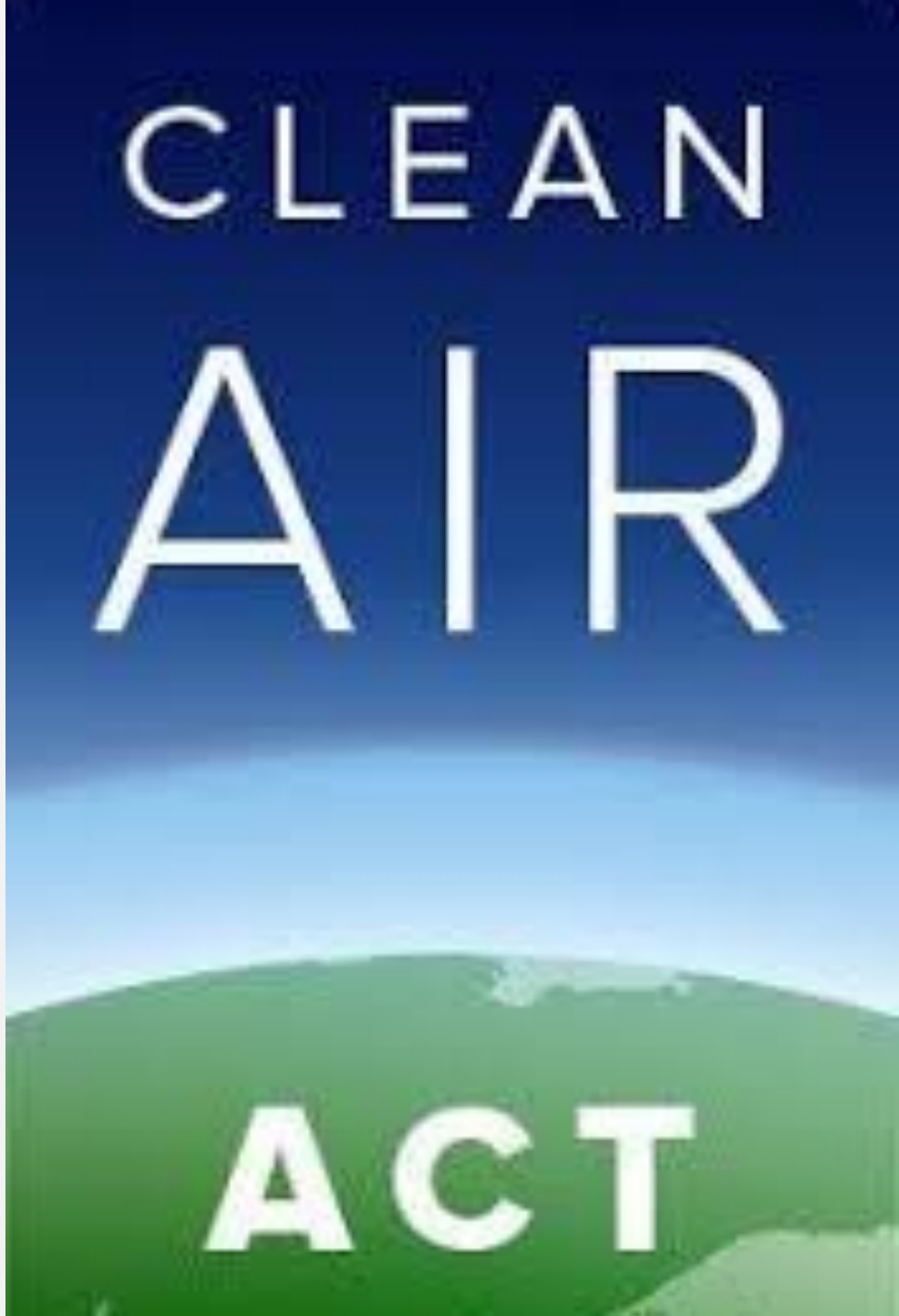
REGULATORY TECHNIQUES

- Harm-Based Standards
  - Setting pollution limits based on levels where we expect an unreasonable risk of harm to human health
  - Example: Clean Air Act; Ambient Air Standards
- Technology-Based Standards
  - Set pollution limits based on levels that we expect a source to achieve based on available control technologies
  - Example: Clean Air Act; Major Stationary Sources
- Technology-Forcing Standards
  - Set pollution limits that cannot be met by existing pollution control technology
  - Example: Clean Air Act; Mobile source gas mileage standards
- Market-Based Strategies
  - Indirect influencing of polluter behavior by incentivizing certain behaviors that will result in preferred environmental behavior
  - Example: Carbon tax, Cap and Trade, Cash for Clunkers program, Acid rain emissions trading program

OVERVIEW OF PRESENTATION

- The Clean Air Act
- Regulation of Greenhouse Gases in the United States
- Emerging Issues



INTRODUCTION TO THE CLEAN AIR ACT

TIMELINE OF THE CLEAN AIR ACT

- Air Pollution Control Act of 1955
  - Authorized research of air pollution issues upon the request of a state
  - No air pollution control standards
- Clean Air Act of 1963
  - Requires research of air pollution issues
  - Required to develop air quality criteria for informational purposes
- Clean Air Act of 1970

Downtown Pittsburgh at 8:00 a.m. in 1940

1970 – CLEAN AIR ACT

- § 107-111: Established National Ambient Air Quality Standards (NAAQS) and the requirement for states to develop State Implementation Plans
- § 112 – Hazardous Air Pollutants
  - Directed EPA to identify hazardous air pollutants, which, in the judgment of the EPA, is an air pollutant that may cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.
  - While the EPA had discretion in identifying hazardous air pollutants, once a pollutant was identified it had to promulgate emissions standards.
- Mobile Sources: Required the EPA to issue regulations requiring the automobile industry to reduce the concentrations of carbon monoxide, hydrocarbons, and nitrogen oxides by over 90% over a 5 year period

1977 AMENDMENTS – THE PREVENTION OF SIGNIFICANT DETERIORATION

- Congress amended the Clean Air Act to require the Prevention of Significant Deterioration Program, which is meant to limit the amount that a new source can degrade existing air quality in areas that are in compliance with NAAQS, and imposed additional technology-based standards

1990 AMENDMENTS

- Added more teeth to the requirement that states ensure compliance with the NAAQS
- Overhauled section 112 (Hazardous Air Pollutants) by specifically listing over 150 hazardous air pollutants, and requiring the EPA to develop technology-based standards for each listed pollutant
- Created an emissions trading scheme to reduce sulfur dioxide emissions, which is an ambient air pollutant and precursor to acid rain

SUMMARY OF CLEAN AIR ACT

- Regulatory Technique
  - Technology Based Standard – Stationary Sources
  - Technology Forcing Standard – Mobile Sources
  - Harm-Based Standards – National Ambient Air Quality Standards
- Main Requirements of the Clean Air Act
  - § 107—110: Requires the EPA to set harm-based national ambient air quality standards (NAAQS) for "criteria" air pollutants and requires states to develop plans to meet the NAAQS
  - § 111: Requires the EPA to establish best available control technology standards for new stationary sources of air pollution
  - § 112: Requires the EPA to establish maximum available control technology standards (MACT) for over 150 listed hazardous air pollutants
  - Mobile Sources: Requires the EPA to establish standards to reduce automobile and truck tailpipe emissions

NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS)

Purpose: To measure and limit the concentration of common air pollutants in communities to levels that ensure the protection of public health

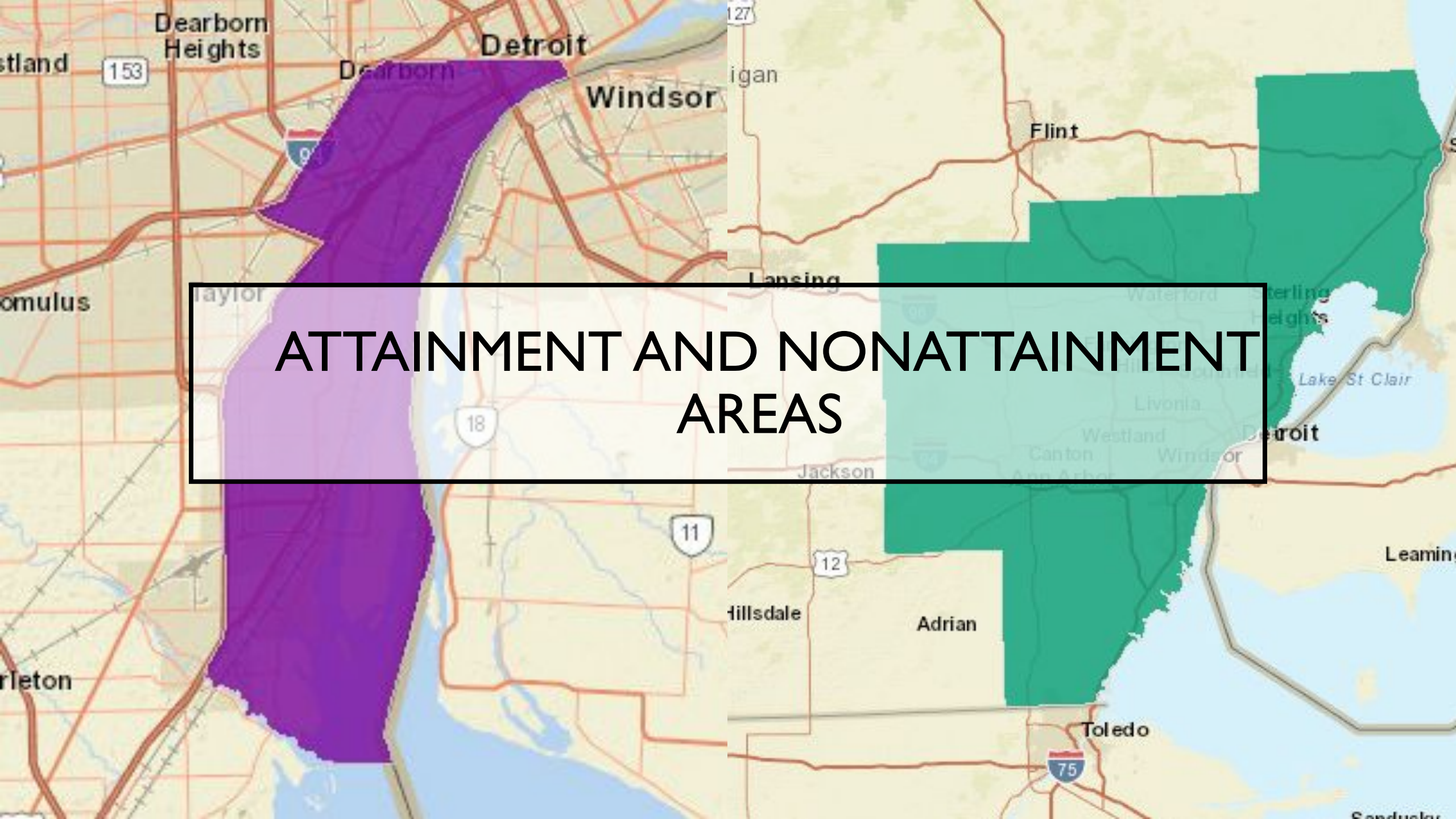
SETTING NATIONAL AMBIENT AIR QUALITY STANDARDS

- Statutory Language
  - § 108: EPA must publish a list of air pollutants which may reasonably be anticipated to endanger public health or welfare, and which are emitted from numerous or diverse mobile or stationary sources.
  - § 108: The EPA shall issue air quality criteria for an air pollutant within 12 months after being included on the list.
  - § 109: The EPA must establish national primary and secondary air quality standards describing a national ambient air quality standard (NAAQS) for each listed pollutant.
    - The Primary NAAQS must be set at a level that allows for an adequate margin of safety necessary to protect the public health and is enforceable.
    - The Secondary NAAQS is set at a level that is required to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. These standards are not enforceable.
- Criteria Air Pollutants
  - Lead, Ozone, Particulate Matter 2.5, Particulate Matter 10, Nitrogen Oxides, Sulfur Dioxide, Carbon Monoxide

Pollutant	Type	Standard	Averaging Time	Form[a]	Regulatory Citation
Sulfur dioxide (SO_2)	Primary	75 ppb	1-hour	99th Percentile of 1-hour daily maximum concentrations, averaged over 3 years	40 C.F.R. 50.17a
	Secondary	0.5 ppm (1,300 µg/m³)	3-hour	Not to be exceeded more than once per year	40 C.F.R. 50.5a
Particulate matter (PM_{10})	Primary and Secondary	150 µg/m³	24-hour	Not to be exceeded more than once per year on average over 3 years	40 C.F.R. 50.6a
Fine particulate matter ($PM_{2.5}$)	Primary	12 µg/m³	annual	Annual mean, averaged over 3 years	40 C.F.R. 50.18a
	Secondary	15 µg/m³	annual	Annual mean, averaged over 3 years	40 C.F.R. 50.7a
	Primary and Secondary	35 µg/m³	24-hour	98th percentile, averaged over 3 years	40 C.F.R. 50.18a
Carbon monoxide (CO)	Primary	35 ppm (40 mg/m³)	1-hour	Not to be exceeded more than once per year	40 C.F.R. 50.8a(2)
	Primary	9 ppm (10 mg/m³)	8-hour	Not to be exceeded more than once per year	40 C.F.R. 50.8a(1)
Ozone (O_3)	Primary and Secondary	0.12 ppm (235 µg/m³)	1-hour[b]	expected number of days per calendar year, with maximum hourly average concentration greater than 0.12 ppm, is equal to or less than 1	40 C.F.R. 50.9a
	Primary and Secondary	0.070 ppm (140 µg/m³)	8-hour	Annual fourth-highest daily maximum 8-hour concentration, averaged over 3 years	40 C.F.R. 50.19a
Nitrogen dioxide (NO_2)	Primary and Secondary	0.053 ppm (100 µg/m³)	annual	Annual mean	40 C.F.R. 50.11ab
Lead (Pb)	Primary and Secondary	0.15 µg/m³	Rolling 3 months	Not to be exceeded	40 C.F.R. 50.12a

IMPLEMENTING NATIONAL AMBIENT AIR QUALITY STANDARDS

- Requires states to develop a State Implementation Plan (SIP) that describes how the state will ensure compliance with the NAAQS.
  - Enforceable emissions limitations on stationary sources in the state
  - Regulations of the modification and construction of stationary sources, generally through preconstruction permits
  - Include a program to provide for the enforcement of requirements in the SIP
- Requires states to develop ambient air monitoring networks to monitor ambient air pollution levels. Based on monitoring networks, every area of the country is either classified as in "attainment" or "non-attainment" with NAAQS.
  - If any area of the state is in "non-attainment," the state must submit a revised SIP to lower pollution. Additionally, more stringent permitting requirements apply in that area.
  - All other areas are classified as attainment areas.



ATTAINMENT AND NONATTAINMENT AREAS

NON-ATTAINMENT CLASSIFICATION PROCESS

October 2015: Ozone NAAQS is lowered from 75 ppb to 70 ppb

September 2016: Michigan recommends 7 county area in Southeast Michigan be designated as "non-attainment" area

June 2017: One year delay in finalizing non-attainment designations

August 3, 2018: Final ozone non-attainment designations

NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Purpose: Requires certain facilities to meet technology based standards to control air pollution at the source

NEW AND EXISTING SOURCE PERFORMANCE STANDARDS

- New Sources
  - *Who does it apply to* - Limited to specific types of facilities that the EPA believes significantly contributes to air pollution which may reasonably be anticipated to endanger public health or welfare
  - *How are standards set* – Much achieve emissions reductions that reflect what is achievable by the application of the best system of emission reduction that has been adequately demonstrated
- Existing Sources
  - *Gap Filler* – Empowers EPA to regulate emissions of non-criteria, non-hazardous pollutants from existing stationary sources

EXAMPLE OF NEW SOURCE PERFORMANCE STANDARDS

Large Municipal Waste Incinerators Constructed After 1994

- PM: 24 mg/cubic meter
- Cadmium: 0.01 mg/cubic meter
- Lead: 0.14 mg/cubic meter
- Mercury: 0.05 mg/cubic meter
- Sulfur Dioxide: 30 ppm
- Hydrogen Chloride: 25 ppm
- Dioxins/Furans: 13 ng/cubic meter
- Nitrogen Oxides: 150 ppm
- Carbon Monoxide: 150 ppm

Large Municipal Waste Incinerators Constructed Before 1994

- **PM: 27 mg/ cubic meter**
- **Cadmium: 0.04 mg/ cubic meter**
- **Lead: 0.44 mg/cubic meter**
- **Mercury: 0.08 mg/cubic meter**
- Sulfur Dioxide: 29 parts per million
- **Hydrogen Chloride: 29 ppm**
- **Dioxins/Furans: 30 ng/cubic meter**
- **Nitrogen Oxides: 250 ppm**
- **Carbon Monoxide: 200 ppm**

HAZARDOUS AIR POLLUTANTS

Purpose: Requires facilities that are sources of hazardous air pollutants to meet technology based standards

HAZARDOUS AIR POLLUTANTS

- List of Pollutants
  - Congress identified 187 hazardous air pollutants in the 1990 Clean Air Act amendments
  - Generally are pollutants that may present a threat of adverse human health or environmental effects that is not a criteria air pollutant
- List of Categories and Subcategories of Pollutants
  - Within 12 months, EPA must publish, and must revise at least every 8 years, a list of all categories and subcategories of major sources and area sources of hazardous air pollutants

MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS

- Definition of Major Source: A source that has the potential to emit 10 or more tons per year of any individual HAP or 25 tons per year or more of any combination of HAPs
- Regulation: Must comply with emission standard that requires the maximum degree of reduction that the EPA, taking costs into consideration, determines is achievable for that category or subcategory
  - New Sources: Max. degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source.
  - Existing Sources: (1) Average emissions limitation achieved by the best performing 12% of the existing sources, or; (2) the average emission limitation achieved by the best performing 5 sources in the category or subcategory for categories or subcategories with fewer than 30 sources.

AREA SOURCE OF HAZARDOUS AIR POLLUTANTS

- Definition of Area Source: Any source of hazardous air pollutants that is not a major source
- Regulation: Only if the EPA finds that the source if part of a category that presents a threat of adverse effects to human health or the environment. Generally must comply with MACT standards.
  - Example: Bulk gasoline plants where gasoline is received and distributed for transport in bulk quantities is regarded as an area source

AIR QUALITY PERMITS

TWO TYPES OF AIR QUALITY PERMITS

Permits to Install

Renewable Operating Permits (Title V Permits)

PERMITS TO INSTALL

When Is It Required – Prior to any person installing any equipment that has the potential to emit an air contaminant, subject to exceptions, and must be obtained prior to construction

- New facilities
- Modifications to existing facilities

What Does it Do – Contains conditions that will ensure the facility is operating in compliance with all regulations (Emissions limits, Monitoring requirements, Reporting requirements)

THE PERMIT TO INSTALL APPLICATION

1.) What equipment is being installed

2.) Plant layout map

3.) What laws/regulations apply

4.) Anticipated air pollution

- Potential to emit "criteria" air pollutants

POTENTIAL TO EMIT

A source's "potential to emit" is the amount of pollution it would emit under its worst case scenario.

A source's potential to emit determines how stringently it must control its pollution

THREE TYPES OF PERMITS TO INSTALL

1.) Major New Source/Major Modification to Existing Source

2.) Minor New Source/Minor Modification to Existing Source

3.) Synthetic Minor Source

MAJOR SOURCE THRESHOLDS

- New Source
  - Potential to emit 100 tons per year or more of a criteria pollution (Limited to specific sources)
  - Any source that has the potential to emit 250 tons per year or more of a criteria air pollutant
- Modifications
  - Potential to emit 100 tons per year or more of carbon monoxide
  - Potential to emit 40 tons per year or more of sulfur dioxide
  - Potential to emit 40 tons per year of nitrogen oxides

KEY POINT

- The distinction between a “major” source and a ”minor” source is critical! Major sources are required to do significantly more to control air pollution than minor sources.

MAJOR SOURCE/MODIFICATION PERMIT REQUIREMENTS

Prevention of Significant Deterioration Review

Major new source/modification locating in an attainment area

1.) Must install "best available control technology"

2.) Must conduct preconstruction air quality monitoring in the area where the source is to be located

Nonattainment Review

Major new source/modification locating in a non-attainment area

1.) Must install pollution control technology capable of ensuring the "lowest achievable emissions rate"

2.) Must offset any increase in pollution with a decrease of pollution in the same area

3.) Must analyze alternatives

SYNTHETIC MINOR PERMITS

If a source has the potential to emit pollution above the major source thresholds, it may voluntarily propose to limit its potential to emit to below the thresholds to avoid major source review

Permit must contain conditions that ensure the restrictions on the source's potential to emit are "legally and practically enforceable"

PURPOSE OF PERMITS TO INSTALL

- Will the equipment for which the permit is sought operate in compliance with the Clean Air Act/federal regulations and state air quality laws/regulations?
  - New Source Performance Standard
  - National Emission Standards for Hazardous Air Pollutants
  - Major Source/Modification Requirements
- Will the operation of the equipment interfere with the attainment or maintenance of any National Ambient Air Quality Standard?

FINAL PERMITS

Emissions Limits

- Watch out for: Averaging times - Are the emissions limits assessed on a 1-hour average, 24-hour average, monthly average?

Monitoring/Testing

- Watch out for: Frequency – Is the facility going to continuously monitor emissions, or take a stack test every year, every 3 years, every 5 years?

Recordkeeping/Reporting

- Watch out for: Submissions to State – Does the facility simply have to make records to available to regulatory agency upon request, or do they have to submit the records to regulatory agency on a regular basis?

GAS PLANT EXAMPLE

- Permit applicant wants to convert coal-fired power plant to gas-fired power plant. The plant is located in a sulfur dioxide non-attainment area
- Permit applicant proposes to limit sulfur dioxide emissions to 39 tons per year of sulfur dioxide, just below 40 tons per year major modification threshold, in order to avoid nonattainment review
- Permit requires facility to sample the sulfur content of gas combusted at the plant every month, and to calculate the total tons of sulfur dioxide emissions emitted for that month based on the sample
- Permit requires facility to test sulfur dioxide emissions every 5 years

TITLE V OPERATING PERMITS

TITLE V OPERATING PERMITS

- Required for facilities that are:
  - A major source of hazardous air pollutants,
  - An area source of hazardous air pollutants, or;
  - A major source of criteria air pollutants.
- Fixed, renewable term not to exceed 5 years
- Generally serves as the "clearinghouse permit" for major sources and includes a description of every emissions unit, emissions limits, monitoring requirements, recordkeeping requirements, and reporting requirements

CLEAN AIR ACT AND GREENHOUSE GASES

AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009

- Failed 1,400 page bill, commonly referred to as the Waxman-Markey bill, to create a greenhouse gas bill that would have established emissions caps on several greenhouse gases through 2050 and instituted a system for trading emissions allowances.
- Required 17% reduction in greenhouse gas emissions by 2020
- Passed in the House of Representatives by a vote of 219-212

MASSACHUSETTS V. EPA

01

In 1999, environmental groups filed a rulemaking petition asking the EPA to regulate greenhouse gas emissions from new motor vehicles under § 202 of the Clean Air Act based on the argument that they were accelerating climate change

02

In 2003, the EPA denied the petition concluding that it lacked authority under the Clean Air Act to regulate greenhouse gases

03

By 2007, the case had worked its way to the United States Supreme Court

MASSACHUSETTS V. EPA (2007)

- In a 5-4 decision, the United States Supreme Court rejected the argument that the EPA lacked authority to regulate GHG under the Clean Air Act, noting that the EPA has the authority to regulate "air pollution agents," which was an intentionally broad phrase.
- EPA can avoid taking action only if it determines that greenhouse gases do not contribute to climate change, or it provides some reasonable explanation as to why it cannot or will not exercise its discretion to regulate

THREE MAIN CLEAN AIR ACT REGULATIONS

1.) 42 USC 7475 - Prevention of Significant Deterioration Permits

2.) 42 USC 7411(b) - New Source Performance Standards

3.) 42 USC 7411(d) – Existing Source Performance Standards

THE CLEAN POWER PLAN

- In June 2013, President Obama directed the EPA to issue new and existing source performance standards to regulate greenhouse gas emissions from the power sector.
- On October 23, 2015, the EPA published the Clean Power Plan Rule, to regulate greenhouse gas emissions from existing fossil fuel-fired power plants.

THE CLEAN POWER PLAN

Establishing State-Specific Targets	National emission standards for two subcategories of power plants: Coal-fired and natural gas combined cycle facilities (Non-binding) Established state-specific targets by applying national emission standards to each state's baseline generation mix.
State Plans	Policies to reach state-specific targets set by the EPA would be determined by state plans Plans could include existing fossil fuel-fired power plants substituting a portion of generation with low/zero emission generation sources States were required to submit plans by September 6, 2016
Goal	Lower greenhouse gas emissions from the power sector to 32% below 2005 levels by 2030

CONCERN AMONG ENVIRONMENTAL ADVOCATES

MASSACHUSETTS V. EPA (2007)

- **John Paul Stevens**
- **Ruth Bader Ginsburg**
- **David Souter**
- **Stephen Breyer**
- **Anthony Kennedy**
- John Roberts
- Samuel Alito
- Clarence Thomas
- Antonin Scalia

WEST VIRGINIA V. EPA (2022)

- ~~John Paul Stevens~~ Elena Kagan
- ~~Ruth Bader Ginsburg~~ Amy Barrett
- ~~David Souter~~ Sonia Sotomayor
- Stephen Breyer
- ~~Anthony Kennedy~~ Brett Kavanaugh
- John Roberts
- Samuel Alito
- Clarence Thomas
- ~~Antonin Scalia~~ Neil Gorsuch

WEST VIRGINIA V. EPA (JUN. 30, 2022)

- Clean Air Act § 111(a)(1) - Definition of Standards of Performance: Performance standards must reflect the "degree of emission limitation achievable through the application of the best system of emission reduction"
- Does the Clean Air Act give the EPA the power to create rules that require "generation shifting" from high-emitting sources (i.e., coal-fired power plants) to lower- emitting sources (i.e., gas-fired power plants and renewables)?

Obama Clean Power Plan

- Created state-specific targets for reducing carbon emissions from electric power sector, and required states to develop plans
- Estimated that the value of reducing 1 ton of CO2 emissions to be $48
- Reduce CO2 emissions by 415 million tons

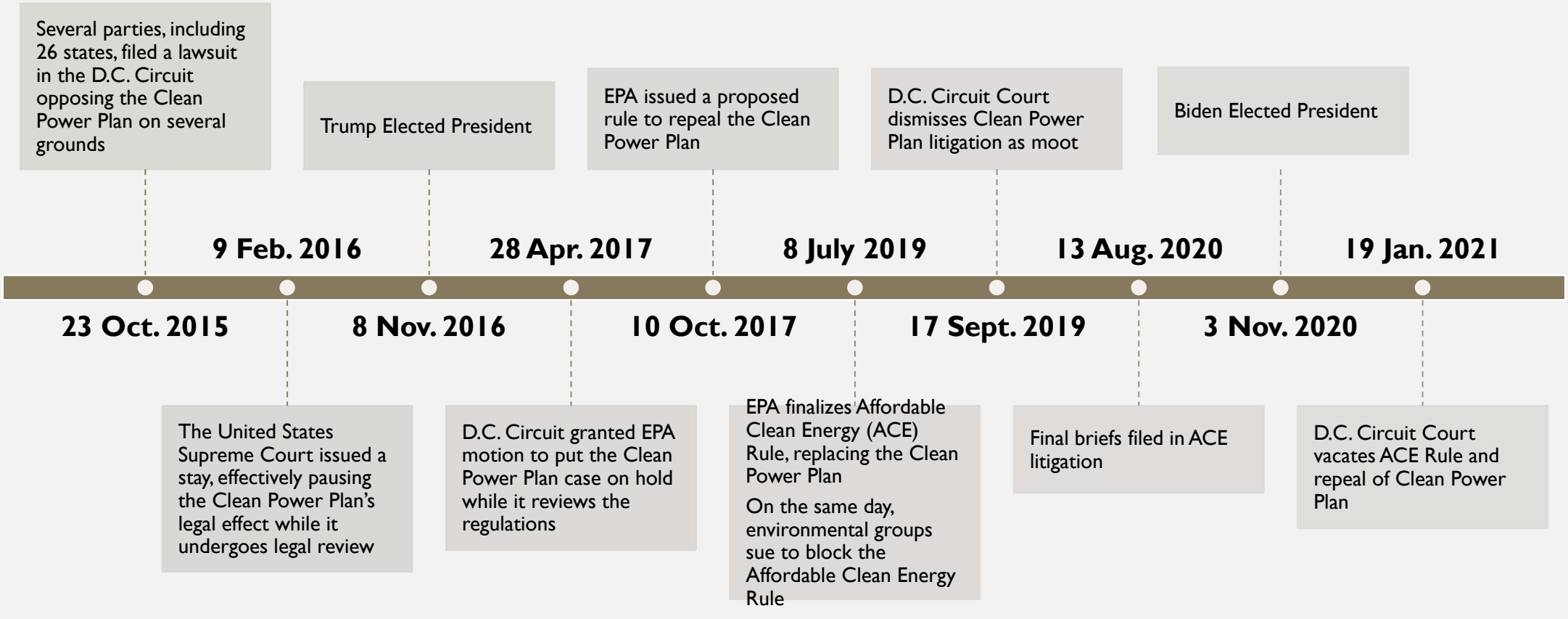
Trump Affordable Clean Energy Rule

- Directs states to establish performance standards for power plants based solely on heat rate improvements
- Estimated the value of reducing 1 ton of CO2 emissions was as little as $1
- Reduce CO2 emissions by 11 million tons

WEST VIRGINIA V. EPA (JUN. 30, 2022) –

- Majority Opinion - Largely relies on "major questions doctrine" - If a regulation involves a "major policy decision," Congress must provide a clear grant of authority in the statutory text.
  - Congress rejected bills that would codify Clean Power Plan in previous legislation
  - Clean Power Plan is "transformative and unprecedented"
- Gorsuch Concurring Opinion – Would go further and essentially prohibit Congress from delegating any significant legislative authority to agencies.

CLEAN POWER PLAN LITIGATION AND RULE CHANGES



QUESTIONS POST-WEST VIRGINIA V. EPA

- Can the EPA still regulate GHG from existing coal-fired power plants?
  - Yes. However, they can't adopt regulations that rely on generation shifting (i.e., fossil fuel → renewables)
- So the EPA can only regulate GHG from existing coal-fired power plants with regulations that apply inside the fenceline?
  - Uncertain. EPA may be able to adopt regulations that involve requirements that apply beyond the fenceline, but it can't involve generation shifting.
- What else might amount to a "major question" anyway?
  - Uncertain. Court used vague factors in making its determination, such as whether the regulation is "extraordinary", "of political and economic significance," and represents an "unheralded" use of agency authority.

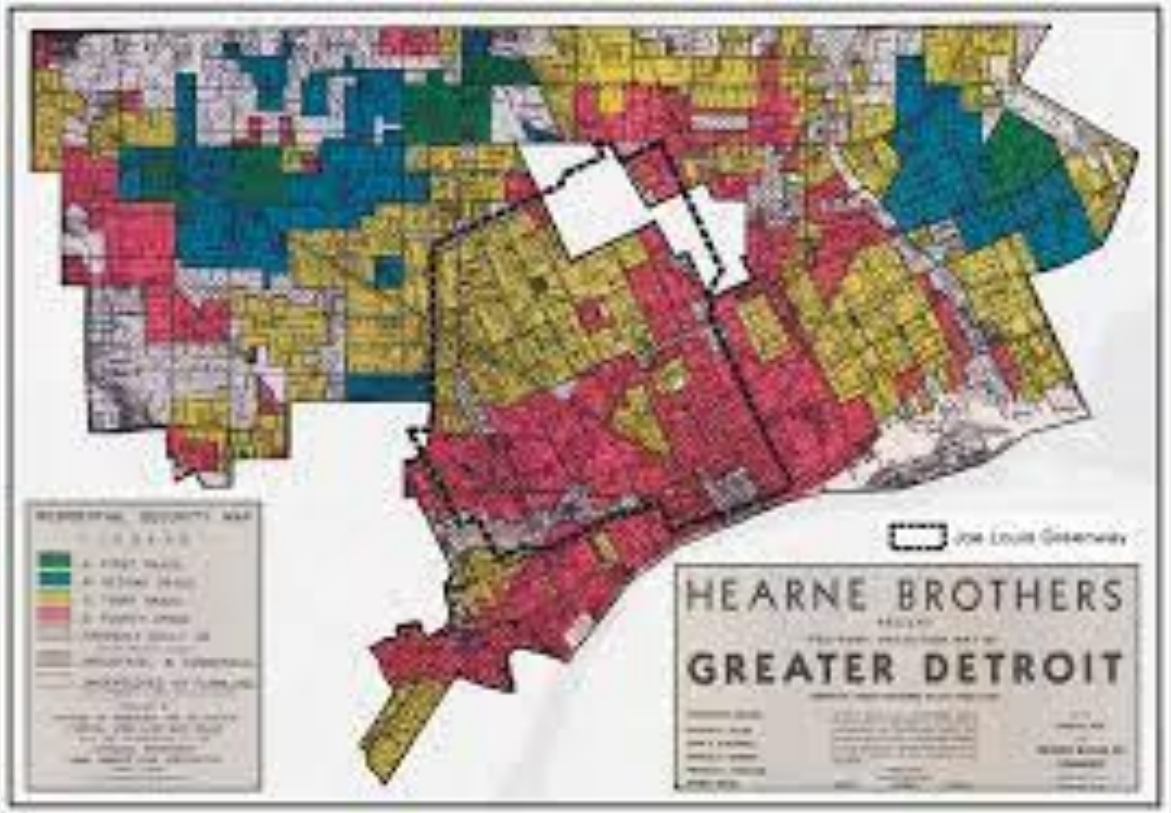
Biden Clean Power Plan 2.0
Finalized May 9, 2024
Effective July 8, 2024

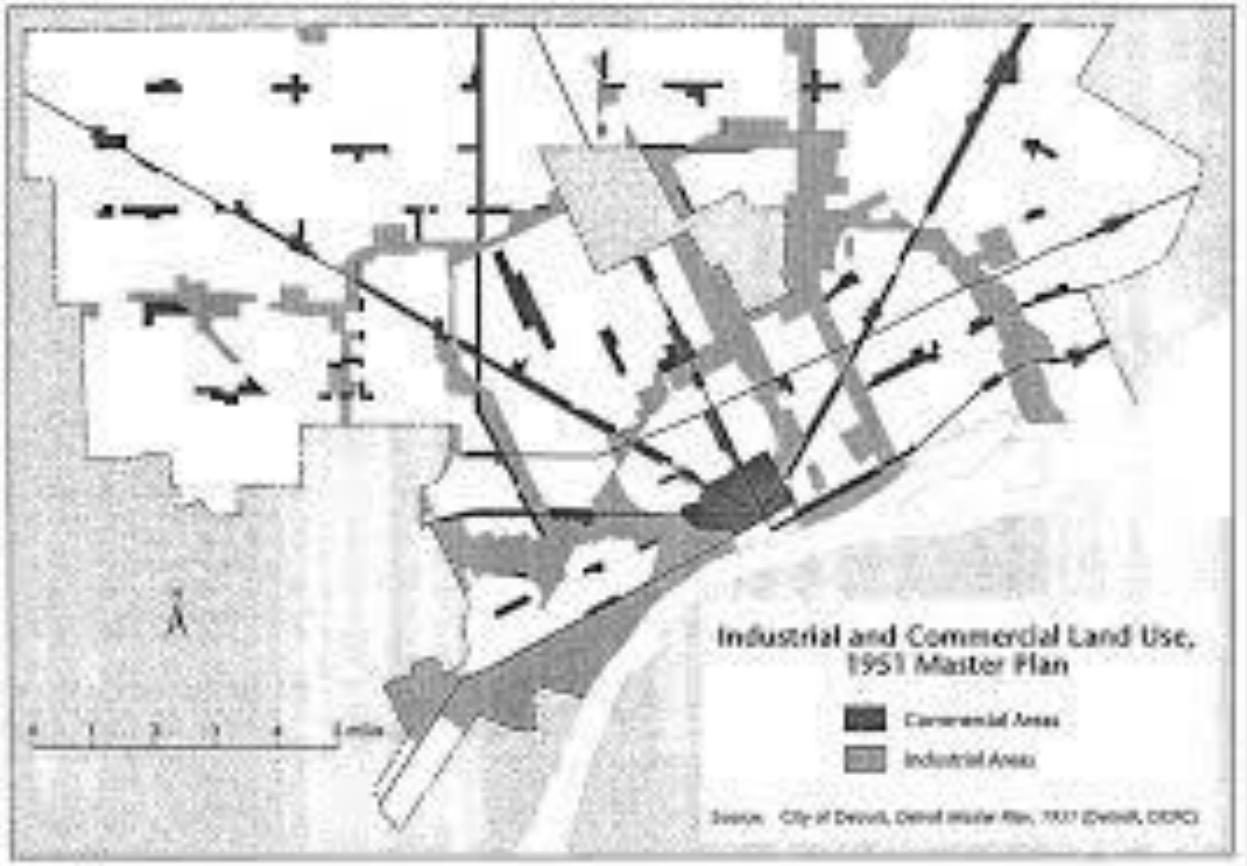
- Existing Coal Fired Power Plants
  - Retiring Before 2032 - Continue routine methods of operation and maintenance until retirement.
  - Retiring Between 2032 to 2039 - Reduce emissions by 16% by transitioning to co-firing gas with a 60/40 coal-gas split by 2030.
  - Operating in 2039 and beyond - Reduce carbon emissions by nearly 90% through carbon capture and storage by 2032
- Existing Gas Plants (Only applies to 300 Mw baseload plants with annual capacity factor greater than 50%)
  - ~~90% carbon capture and storage by 2032 or transition to 96% hydrogen blending by 2038~~
- New Gas Plants
  - Base Load (Greater than 40% annual capacity factor) - 90% carbon capture and storage by 2032
  - Intermediate (20 - 40% annual capacity factor)- Meet performance threshold of an efficient simple cycle plant (1,150 lbs. of CO2/MWh)
  - Peaking (Less than 20% annual capacity factor) - Use lower emitting fuels
- Legal Challenges
  - Federal court denied lawsuit filed by a coalition of fossil fuel industries and state attorneys general that sought to block the Clean Power Plan 2.0 from going into effect pending full judicial review
  - Emergency application for immediate stay filed with U.S. Supreme Court on July 23rd

Loper Bright Enterprises v. Raimondo (2024)

- In 6-3 decision, U.S. Supreme Court overturned the *Chevron* doctrine, which established the framework for how federal courts would adjudicate disputes regarding agency interpretations of their authority under statutes.
  - *Chevron U.S.A. v. NRDC* (1984) - Courts to grant deference to agency interpretation of federal laws so long as the statutory language is unclear or ambiguous.
  - Previous cases that utilized the *Chevron* doctrine still stand
- *Loper* Doctrine
  - Court must determine the "best reading" of the statute without any deference to administrative agencies.
- Takeaways
  - Uncertain impact on state courts: Some states have adopted the *Chevron* doctrine while others have not. Will state courts follow *Loper*?
  - How far will the federal judiciary interject itself into administrative rulemaking?

GAPS IN THE CLEAN AIR ACT AND EMERGING ISSUES


Joe Louis Greenway
HEARNE BROTHERS
GREATER DETROIT


Industrial and Commercial Land Use,
1951 Master Plan
Commercial Areas
Industrial Areas

GAPS IN THE CLEAN AIR ACT

- *Regulates pollutant by pollutant*
  - Does not address synergistic effects on health from exposure to multiple air pollutants
- *No Ambient Regulations for Air Toxics*
  - Facilities only have to comply with technology based standards
- *Permitting Processes Don't Require Consideration of Community Characteristics*
  - Assessment of socioeconomic characteristics and potential disparities not required
  - Assessment of existing public health characteristics and potential disparities not required

EPA TITLE VI REGULATIONS AND MICHIGAN

- Applicability
  - Any agency that receives financial assistance from the EPA must comply with EPA nondiscrimination regulations enacted pursuant to Title VI of the Civil Rights Act
- Regulations
  - Prohibits state environmental agencies from making decisions that have a discriminatory effect on the basis of race, color, or national origin.
- Michigan Complaints
  - Pending - 3 Title VI complaints regarding 3 air quality permitting decisions made by EGLE alleging discrimination on the basis of race/color
  - Pending – 1 Nondiscrimination grievance alleging EGLE's hazardous waste licensing decisions has resulted in discrimination on the basis of race/color

State Environmental Justice Laws

New Jersey (2020)

- No permit for new facility if it will **cause/contribute to** adverse cumulative health impacts in an overburdened community.
- **Allows for additional permit conditions** for modification to an existing facility if permit will cause/contribute to adverse cumulative health impacts in an overburdened community.

New York (2023)

- No permit for a new facility if it will cause/contribute **more than a de minimis pollution** to an existing disproportionate pollution burden in a disadvantaged community
- No permit for a modification to an existing facility if it will cause a **significant increase** in an existing disproportionate pollution burden in a disadvantaged community

Massachusetts (2021)

- Establishes cumulative impact regulations that are health-based rather than equity-based

Minnesota (2023)

- Permits that will have a substantial adverse impact must be accompanied by a community benefit agreement

Vermont (2023)

- Requires department to establish cumulative impact regulations by July 1, 2025

WILDFIRE SMOKE AND EXCEPTIONAL EVENTS

What Are Exceptional Events?

- States can request authorization from EPA to exclude air quality data from assessing compliance with the National Ambient Air Quality Standard on the grounds that the data was influenced by "exceptional events."
- Can be used to justify classifying an area as in "attainment" with National Ambient Air Quality Standards rather than "nonattainment"

What are the implications?

- Allows states to avoid implementing additional regulations
- Leaves residents living with unsafe levels of air pollution


ENVIRONMENT

State asks EPA to allow it to discount Detroit air quality data

by Nina Ignaczak, Planet Detroit
March 3, 2023


Environment & Climate Change

Sierra Club sues EPA over ozone attainment finding for SE Michigan

THANK YOU!

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