Other Clean Air Act Issues

MAY IS ASTHMA AWARENESS MONTH
Asthma is a serious public health problem. According to the CDC:

- An estimated 25.9 million people, including almost 7.1 million children, have asthma.
- Asthma prevalence is higher among persons with family income below the poverty level.
- Asthma accounts for more than 15 million physician office and hospital outpatient department visits, and nearly 2 million emergency department visits each year.
EPA’S Efforts

EPA’s efforts to deal with the U.S. asthma problem and other health issues associated with the pollutants found in the air we breathe include setting National Ambient Air Quality Standards (NAAQs), and in the past few years the finalization of:

- The Transport or Cross-State Air Pollution Rule; and
- The Mercury and Air Toxics rule (MATs)
SIPs/FIPs and Good Neighbors

- CAA requires that EPA establish NAAQS for pollutants at levels that will protect public health.
- After setting a NAAQS - EPA must designate “nonattainment” areas.
- Within 3 years of any new or revised NAAQS each state is required to submit a State Implementation Plan (SIP).
- As part of the SIPs, States must reduce emissions that will significantly contribute to nonattainment problem in another state - the Good Neighbor Provision of the CAA.
- EPA must review each State’s SIP, and if it finds a SIP inadequate EPA has two years to issue a Federal Implementation Plan (FIP).
On July 6, 2011, EPA finalized the Cross-State Air Pollution Rule (CSAPR or Transport rule) which requires that states significantly improve air quality by reducing power plant emissions that contribute to ozone and/or fine particle pollution in other states.

The rule requires significant reductions in sulfur dioxide ($SO_2$) and nitrogen oxide ($NO_X$) emissions that cross state lines. These pollutants react in the atmosphere to form fine particles and ground-level ozone and are transported long distances, making it difficult for other states to achieve NAAQS.
The CAA directs states to submit SIPs that include provisions that adequately “prohibit any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in, or interfere with maintenance by, any other State with . . . any NAAQs.”

Good Neighbor Provision
Challenges to the Transport Rule

- EPA took a two-step approach to regulating cross-state air pollution issues by:
  - finalizing the Transport rule, and
  - issuing FIPs for the State’s that had failed to submit approvable SIPs to ensure compliance with the NAAQs

- Under the Transport Rule, an upwind State “contribute[d] significantly” to downwind nonattainment to the extent its exported pollution both (1) produced one percent or more of a NAAQS in at least one downwind State and (2) could be eliminated cost-effectively, as determined by EPA.

- A group of states and local governments joined by industry groups petitioned for review of the Transport rule in the U.S. Court of Appeals for the D.C. Circuit which vacated the rule in its entirety holding that EPA’s actions exceeded the EPA’s statutory Authority
The 2012 D.C. Circuit ruling vacated the Transport rule and ordered the EPA to continue administering the less-stringent 2005 Clean Air Interstate Rule, finding that:

- the rule impermissibly requires individual upwind states to reduce their emissions by more than their significant contribution to downwind states' nonattainment, and
- that the good neighbor provision didn't allow consideration of any factors aside from the physical amount of contribution to downwind nonattainment.

The D.C. Circuit also found the EPA exceeded its authority under the CAA in issuing FIPs without allowing states an opportunity to first issue revised state plans.
On April 29, 2014 the Supreme Court disagreed with the D.C. Circuit holding that since the CAA doesn't specifically address allocation of upwind pollutants, congress’ silence effectively delegates authority to EPA to select from among reasonable options, and that EPA’s cost-effective allocation of emission reductions among upwind states is a permissible, workable, and equitable interpretation of the good neighbor provision.

The court also ruled that EPA has authority under the CAA to impose FIPS immediately after disapproving SIPS.
In December 2011, EPA finalized national emission standards for hazardous air pollutants (NESHAPS) for electric generating units (EGUs). Commonly referred to as MATS rule this NESHAP adopts emission limits on mercury, acid gases and other toxic pollutants emitted from affected coal and oil-fired power plants.
MATS Benefits

- There are about 1,400 coal and oil-fired electric generating units at 600 power plants that emit harmful pollutants including mercury, non-mercury metallic toxics, acid gases and dioxin.
- 50% of all mercury emitted into the air today comes from power plants as well as over 75% of all acid gases in the United States.
- Implementation of the MATS rule will prevent 90% of the mercury in coal, burned in power plants, from being emitted to the air; reduce 88% of acid gas emissions from power plants, and cut 41% of sulfur dioxide emissions from power plants beyond the reductions expected from implementation of the Transport Rule.
MATS Compliance

- Most affected sources will be able to comply with the MATS rule because of the many proven and widely available technologies that exist.
- The rule calls for compliance by April 2015, and where an extension is approved by the title V permitting authority by April of 2016.
Where the deactivation or retirement of a unit or a delay in installation of controls due to factors beyond the owner’s/operator’s control would lead to an adverse, localized impact on electric reliability the EPA will work with:

- public utility commissions, the Federal Energy Regulatory Commission and similar groups to ensure that any claims of reliability risks are properly characterized and evaluated; and

- those sources that need an extension of up to 1 additional year, by allowing for an extended compliance schedule in an Administrative Order on Consent that EPA will issue using its CAA Section 113 authority.
A group of states governments joined by industry groups petitioned for review of the MATS rule in the U.S. Court of Appeals for the D.C. Circuit.

On April 15, 2014, the D.C. Circuit Court ruled on a myriad of objections to the MATS rule

- It decided to uphold EPA’s “appropriate and necessary” determination
- The Court ran through each specific objection by the many petitioners, and it deferred to EPA in each case.
Together MATS and the Transport rules are estimated to provide annual benefits of $150 - $380 billion, and prevent:

- 18,000 - 46,000 premature deaths,
- 540,000 asthma attacks,
- 13,000 emergency room visits, and
- 2 million missed work or school days each year.