

EPA Good Neighbor Rule/Healthier Air for Downwind States: U.S. Senate Environment & Public Works Committee Hearing



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The United States Senate Environment & Public Works Committee (“Committee”) held a March 29th hearing titled:

The EPA Good Neighbor Rule: Healthier Air for Downwind States (“Hearing”)

The *Hearing* addressed issues associated with the United States Environmental Protection Agency (“EPA”) Ozone Interstate Transport Rule.

EPA in 2003 promulgated a revision to the 8-hour Clean Air Act National Ambient Air Quality Standard (“NAAQS”). The federal agency had lowered the level of both primary and secondary standards to 0.070 parts per million.

Air transport refers to pollution from upwind emission sources that impact air quality in a particular location downwind. The total pollution in any area forms from the combination of local and upwind sources. The transport of pollutants across state borders is often denominated “interstate air pollution transport.” The transport of interstate air pollution may in some cases affect downwind states’ ability to meet the NAAQS for ozone.

The Clean Air Act contains a “Good Neighbor” provision which requires that EPA and the states address interstate transport of air pollution that affects downwind states’ ability to attain and maintain NAAQS. The provision requires that each state in its State Implementation Plan (“SIP”) prohibit emissions that will:

- Significantly contribute to nonattainment of NAAQS.
- Interfere with maintenance of NAAQS in a downwind state.

A state’s SIP must prohibit sources in that state from emitting any air pollutant in amounts which will contribute significantly to nonattainment, or interfere with maintenance, of NAAQS in another state. If EPA determines that an SIP is inadequate, it must require that the state revise the SIP. A SIP call can be issued to multiple states at the same time. EPA can, in appropriate circumstances, issue a Federal Implementation Plan (“FIP”) in the event the state SIP cannot result in the ability to meet the relevant requirements.

EPA has recently disapproved SIPs from Arkansas and 22 other states addressing ozone interstate transport. Further, EPA has promulgated FIPs for these states.

The Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”) has filed a Petition for Rehearing on EPA’s disapproval of its SIP. Further, the Arkansas Attorney General filed a petition for the Eighth Circuit Court of Appeals on February 16th challenging EPA’s disapproval. A number of other states have filed similar petitions in other federal Circuit Court of Appeals similarly challenging their SIPs’ disapproval.

The witnesses at the March 29th Committee *Hearing* included:

David G. Hill MD

FCCP, Chair

Public Policy Committee, American Lung Association Board of Directors

[03-29-2023 Hill Testimony](#)

Serena McIlwain

Secretary

Maryland Department of the Environment

[03-29-2023 McIlwain Testimony](#)

Karen Peters

Director

Arizona Department of Environmental Quality

[03-29-2023 Peters Testimony](#)

Chris Wells

Executive Director

Mississippi Department of Environmental Quality

[03-29-2023 Wells Testimony](#)

Paul Noe

Vice President

Public Policy, American Forest & Paper Association

[03-29-2023 Noe Testimony](#)

Note that the witnesses included officials from three state environmental agencies, an industry representative, and a physician.

A link to the Hearing and the witnesses written statements can be found [here](#).