



# PM 2.5 – Overdue Protection or Regulatory Godsend?

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# PM2.5 Implementation Rule

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- Ammonia a “regulated NSR pollutant” under NA NSR upon State’s demonstration of its “significant contribution”, DOES NOT make it a “regulated NSR pollutant” under PSD program in any attainment/unclassifiable areas nationally.
- NO<sub>x</sub> a precursor under a rebuttable presumption.



# PM2.5 Implementation Rule

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- State can require inclusion of condensible PM in applicability determinations and setting emission limits in NSR permits during the transition period provided the SIP clearly mandates consideration of condensible PM.
- EPA NOT to revisit applicability determinations made in good faith prior to the transition period for condensible PM.



# PM2.5 Implementation Rule

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- Offsets ratios “recommended” but NOT “mandatory”.
- Source will NOT need to obtain NO<sub>x</sub> offsets for both ozone and PM2.5 NA NSR for the same non-attainment area.
- States must amend minor NSR programs for PM2.5 and its precursors.



# New Day

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- Essentially, the PM 2.5 NAAQS legitimized the regulation of SO<sub>2</sub> in a way not otherwise possible through the SO<sub>2</sub> NAAQS.
- Two important gateways:
  - Section 126
  - Nuisance action



## Section 126

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- *CAIR* defined a minimal “significant impact” threshold for an entire state, and then imposed a “reasonable” level of controls. This was borrowed, or learned from the NO<sub>x</sub> SIP Call experience. Implementation was through C&T.
- *North Carolina v. US EPA* said that the reliance by States on reductions from the C&T violated CAA



## Section 126

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- More specifically, the reliance on SIPs would be contrary to Section 110.
- NO<sub>x</sub> SIP call was implicated by the court, but claimed they were never asked the right question.
- What *NC v. EPA* did not tell us was whether the first step was valid.



## Section 126

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- If the low threshold test for significant impact IS valid, then the NAAQS becomes irrelevant.
- “Cause or contribute”



# Nuisance Action

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- Back up plan for Section 126 (or possibly goes to head of class)
- Similar approach:
  - Threshold is any impact
  - Remedy is reasonable controls
- Boundary is simply the radius of impact.



# Nuisance Action

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- If successful, the NAAQS will be irrelevant.