

## KEY DEVELOPMENTS IN AIR QUALITY: JULY 2025

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This paper highlights certain air quality topics expected to be areas of focus for the second Trump Administration. During the Biden Administration, the U.S. Environmental Protection Agency (“EPA”) imposed more stringent regulations on emissions of volatile organic compounds (“VOCs”) and methane from oil and gas operations and also sought to address interstate transport of air pollution. These initiatives will likely be revisited during the second Trump Administration. Although any changes would apply at the national level, they are particularly relevant in Texas given the amount of oil and gas activity in the state.

### I. Emissions from Oil and Gas Operations

Starting in 2021, the Biden Administration began to take steps to restrict emissions from the oil and gas sector. These steps included:

- a) Setting emission limits and operational standards for new, modified, or reconstructed oil and gas sources;<sup>1</sup>
- b) Establishing guidelines for states to set emission limits and operational standards for existing oil and gas sources;<sup>2</sup>
- c) Revising greenhouse gas reporting requirements for oil and gas systems;<sup>3</sup> and
- d) Imposing a charge for oil and gas facilities that exceed specified emission thresholds.<sup>4</sup>

In March 2025, Trump EPA announced that it would reconsider all of these Biden-era regulations on the oil and gas industry.<sup>5</sup> An update on the status of each as of the date of this paper is provided below.

#### A. New Source Performance Standards and Emission Guidelines

On March 8, 2024, Biden EPA finalized new source performance standards for crude oil and natural gas sources that began construction, reconstruction, or modification after December 6, 2022 (“NSPS OOOOb”).<sup>6</sup> At the same time, Biden EPA published guidelines for states to follow when developing standards for crude oil and natural gas sources that were existing on or before

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<sup>1</sup> 89 Fed. Reg. 16810 (Mar. 8, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> 89 Fed. Reg. 42062 (May 14, 2024).

<sup>4</sup> 89 Fed. Reg. 91094 (Nov. 18, 2024).

<sup>5</sup> U.S. EPA, “EPA Launches Biggest Deregulatory Action in U.S. History” (Mar. 12, 2025): <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history>.

<sup>6</sup> 89 Fed. Reg. 16820 (Mar. 8, 2024).

December 6, 2022 (“EG OOOOc”).<sup>7</sup> NSPS OOOOb and EG OOOOc went into effect on May 7, 2024<sup>8</sup> and require states to submit plans to EPA by March 9, 2026.<sup>9</sup> Several states asked the courts to stay the rules but were denied.<sup>10</sup> In January 2025, Biden EPA proposed technical amendments to NSPS OOOOb and EG OOOOc related to temporary flaring of associated gas and continuous monitoring requirements for flares but otherwise left the rules intact.<sup>11</sup>

On March 12, 2025, EPA Administrator Lee Zeldin announced that EPA would reconsider NSPS OOOOb and EG OOOOc.<sup>12</sup> As of the date of this paper, the White House Office of Management and Budget (“OMB”), which oversees federal government agencies, has posted a notice indicating that it is reviewing an “interim final rule” to delay the compliance deadlines associated with NSPS OOOOb and EG OOOOc.<sup>13</sup> The contents of this interim final rule are not known as of the date of this paper. If the changes to NSPS OOOOb and EG OOOOc are published as an interim final rule, the deadlines could be immediately postponed without a public comment period.

## **B. GHG Reporting**

The Greenhouse Gas Reporting Program (“GHGRP”) was established in 2009 and requires certain sources of greenhouse gases (“GHGs”) to report emissions data on an annual basis. The Inflation Reduction Act of 2022, which President Biden signed in August 2022, directed EPA to engage in periodic reviews to ensure that GHG reporting accurately reflects total emissions from applicable facilities.<sup>14</sup> In response to this mandate, EPA published a final rule to amend Subpart W of the GHGRP regulations, which applies to the petroleum and natural gas systems source category.<sup>15</sup> The amendments expanded the rules to include new emission sources and included new and revised calculation methods in an effort to improve the accuracy of the collected data.<sup>16</sup>

On March 12, 2025, EPA Administrator Zeldin announced that EPA would reconsider the GHGRP on the basis that it “is not directly related to a potential regulation nor developed with that

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 17141.

<sup>10</sup> See e.g., *Oklahoma v. Environmental Protection Agency*, 145 S. Ct. 121 (2024) (where the U.S. Supreme Court denied an application for a stay).

<sup>11</sup> 90 Fed. Reg. 3734 (Jan. 15, 2025).

<sup>12</sup> U.S. EPA, “Trump EPA Announces OOOOb/c Reconsideration of Biden-Harris Rules Strangling American Energy Producers” (Mar. 12, 2025): <https://www.epa.gov/newsreleases/trump-epa-announces-oooo-bc-reconsideration-biden-harris-rules-strangling-american>.

<sup>13</sup> OMB, “Pending EO 12866 Regulatory Review: Extension of Deadlines in Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review” (June 5, 2025): <https://www.reginfo.gov/public/do/eoDetails?rrid=974512>.

<sup>14</sup> H.R.5376, Inflation Reduction Act of 2022 (117th Congress, 2021-2022), section 60113, p. 260.

<sup>15</sup> 89 Fed. Reg. 42062 (May 14, 2024).

<sup>16</sup> *Id.* at 42064.

intention” and is “burdensome.”<sup>17</sup> On March 20, 2025, EPA published a final rule extending the GHGRP reporting deadline for the 2024 reporting year from March 31, 2025 to May 30, 2025.<sup>18</sup> This extension is being challenged in a lawsuit filed by the Environmental Defense Fund that, as of the date of this paper, remains pending.<sup>19</sup> On June 27, 2025, EPA sent OMB a proposal to reconsider the GHGRP, which is classified as a “proposed rule.”<sup>20</sup> The content of this proposed rule is not known as of the date of this paper.

### **C. Waste Emissions Charge**

The Inflation Reduction Act of 2022 amended the Clean Air Act to require EPA to impose and collect an annual charge on methane emissions from large emitters in the oil and gas sector (the “Waste Emissions Charge” or “WEC”).<sup>21</sup> As set out in the statute, the WEC applies to oil and natural gas facilities that report emissions of more than 25,000 metric tons of carbon dioxide equivalent per year pursuant to Subpart W of the GHGRP.<sup>22</sup> The fee would start at \$900 per metric ton in 2024 and increase to \$1,200 per metric ton in 2025 and \$1,500 per metric ton in 2026 and thereafter.<sup>23</sup> On November 18, 2024, Biden EPA published a final rule implementing the WEC.<sup>24</sup>

In February and March, 2025, the House and Senate passed a joint resolution nullifying the November 2024 Biden WEC rule pursuant to authority provided by the Congressional Review Act and barred EPA from issuing a substantially similar rule in the future.<sup>25</sup> The resolution became law with President Trump’s signature on March 14, 2025.<sup>26</sup> However, the requirement for EPA to impose and collect the WEC remains in the Clean Air Act. As of the date of this paper, it is not clear how or if that statutory requirement will be changed.

### **D. Enforcement Priorities**

Consistent with Trump EPA’s reconsideration of Biden EPA’s regulation of the oil and gas industry, the EPA Office of Enforcement and Compliance Assurance (“OECA”) issued a March

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<sup>17</sup> U.S. EPA, “Trump EPA Announces Reconsideration of Burdensome Greenhouse Gas Reporting Program” (Mar. 12, 2025): <https://www.epa.gov/newsreleases/trump-epa-announces-reconsideration-burdensome-greenhouse-gas-reporting-program>.

<sup>18</sup> 90 Fed. Reg. 13085 (Mar. 20, 2025).

<sup>19</sup> See *Environmental Defense Fund v. EPA*, No. 25-1056 (D.C. Cir.).

<sup>20</sup> OMB, “Reconsideration of the Greenhouse Gas Reporting Program” (June 27, 2025): <https://www.reginfo.gov/public/do/eoDetails?rrid=1002216>.

<sup>21</sup> 42 U.S.C. § 7436(c).

<sup>22</sup> *Id.* §§ 7436(c), (d).

<sup>23</sup> *Id.* § 7436(e).

<sup>24</sup> 89 Fed. Reg. 91094 (Nov. 18, 2024).

<sup>25</sup> H.J. Res. 35, “Providing for Congressional Disapproval Under Chapter 8 of Title 5, United States Code, of the Rule Submitted by the Environmental Protection Agency Relating to ‘Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions’” (Mar. 14, 2025): <https://www.congress.gov/bill/119th-congress/house-joint-resolution/35>.

<sup>26</sup> *Id.*

12, 2025 memorandum titled “Implementing National Enforcement and Compliance Initiatives Consistently with Executive Orders and Agency Priorities.”<sup>27</sup> The purpose of the memorandum was to “provide initial guidance on implementing the FY 2024-2027 National Enforcement and Compliance Initiatives [] consistently with the President’s Executive Orders and Administrator Zeldin’s ‘Powering the Great American Comeback’ Initiative.”<sup>28</sup> The memorandum provides in part that “enforcement and compliance will no longer focus on methane emissions from oil and gas facilities” and that “[a]ny orders, settlements, or other resolution of Clean Air Act violations regarding methane emissions from oil and gas facilities already found shall require the concurrence of the Assistant Administrator for OECA or his/her delegee.”<sup>29</sup>

This OECA guidance went into effect “immediately” and “applies to all civil and criminal enforcement staff and all enforcement matters moving forward, including with respect to future actions taken in existing enforcement matters.”<sup>30</sup> As of the date of this paper, it is not clear how the guidance has impacted EPA enforcement related to oil and gas operations.

## **II. Cross-State Air Pollution**

EPA sets National Ambient Air Quality Standards (“NAAQS”) for specific pollutants in order to protect public health and welfare.<sup>31</sup> Once EPA sets the NAAQS, states must submit State Implementation Plans (“SIPs”) adequate to implement, maintain, and enforce the NAAQS.<sup>32</sup> EPA is charged with evaluating whether a SIP “meets all the applicable requirements” of the Clean Air Act.<sup>33</sup> If a state fails to submit a SIP that satisfies the applicable requirements, EPA will issue a Federal Implementation Plan (“FIP”) for that state.<sup>34</sup>

An important SIP requirement is the “Good Neighbor” provision, which requires that a SIP adequately prohibit emissions that will significantly contribute to nonattainment of a NAAQS or interfere with maintenance of a NAAQS.<sup>35</sup> The intent of the Good Neighbor provision is to address the fact that “[a]ir pollution is transient, heedless of state boundaries” and that “[l]eft unregulated, the emitting or upwind State reaps the benefits of the economic activity causing the pollution without bearing all the costs.”<sup>36</sup> Conversely, “downwind States to which the pollution travels are

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<sup>27</sup> U.S. EPA Office of Enforcement and Compliance Assurance, “Implementing National Enforcement and Compliance Initiatives Consistently with Executive Orders and Agency Priorities” (Mar. 12, 2025): <https://www.epa.gov/system/files/documents/2025-03/necimemo-20250312.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 3.

<sup>30</sup> *Id.* at 4.

<sup>31</sup> 42 U.S.C. § 7409(b).

<sup>32</sup> *Id.* § 7410(a).

<sup>33</sup> *Id.* § 7410(k)(3).

<sup>34</sup> *Id.* § 7410(c)(1).

<sup>35</sup> *Id.* § 7410(a)(2)(D)(i)(I).

<sup>36</sup> *E.P.A. v. EME Homer City Generation, L.P.*, 572 U.S. 489, 496, 134 S. Ct. 1584, 1592, 188 L. Ed. 2d 775 (2014).

unable to achieve clean air because of the influx of out-of-state pollution they lack authority to control.”<sup>37</sup>

As summarized below, Biden EPA took numerous regulatory actions to enforce the Good Neighbor provision, including promulgating the “Good Neighbor Plan” in 2023. In March 2025, Trump EPA announced that it plans to end the “so-called ‘Good Neighbor Plan’ which the Biden-Harris Administration used to expand federal rules to more states and sectors beyond the program’s traditional focus and led to the rejection of nearly all [SIPs].”<sup>38</sup> An update on this topic as of the date of this paper, focusing on Texas, is provided below.

### **A. 2015 Ozone NAAQS**

In October 2015, EPA revised the ozone NAAQS to lower the allowable concentration of ozone from 75 parts per billion to 70 parts per billion for the 8-hour standard.<sup>39</sup> This revision started the three-year clock for states to submit SIPs meeting the new ozone NAAQS. Texas timely submitted its SIP on August 17, 2018.<sup>40</sup>

On February 22, 2022, Biden EPA proposed to disapprove SIP submissions from Arkansas, Louisiana, Oklahoma, and Texas for the 2015 8-hour ozone NAAQS based on the Good Neighbor provision.<sup>41</sup> EPA finalized the disapproval of the Texas SIP submission on February 13, 2023.<sup>42</sup> At the same time, EPA disapproved 18 other state SIP submissions in full and two submissions in part for the 2015 ozone NAAQS.<sup>43</sup>

### **B. Good Neighbor Plan**

On March 15, 2023, Biden EPA released its “Good Neighbor Plan” rule. The intent of the rule was to ensure that 23 states would meet the Clean Air Act Good Neighbor requirements related to the 2015 ozone NAAQS in downwind states.<sup>44</sup> EPA published the rule in the Federal Register on June 5, 2023.<sup>45</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> U.S. EPA, “Trump EPA Announces Plan to Work with States on SIPs to Improve Air Quality and Reconsider ‘Good Neighbor Plan’” (Mar. 12, 2025): <https://www.epa.gov/newsreleases/trump-epa-announces-plan-work-states-sips-improve-air-quality-and-reconsider-good>.

<sup>39</sup> 80 Fed. Reg. 65292 (Oct. 26, 2015).

<sup>40</sup> 87 Fed. Reg. 9798, 9824 (Feb. 22, 2022).

<sup>41</sup> 87 Fed. Reg. 9798 (Feb. 22, 2022).

<sup>42</sup> 88 Fed. Reg. 9336 (Feb. 13, 2023).

<sup>43</sup> *Id.*

<sup>44</sup> U.S. EPA, “Good Neighbor Plan for 2015 Ozone NAAQS” (2025): <https://www.epa.gov/Cross-State-Air-Pollution/good-neighbor-plan-2015-ozone-naaqs>.

<sup>45</sup> 88 Fed. Reg. 36654 (June 5, 2023).

### C. Legal Challenges and EPA Response

Multiple states challenged the disapproval of the 2015 ozone SIP submissions and the Good Neighbor Plan rule in federal circuit courts.<sup>46</sup> In May 2023, the U.S. Courts of Appeal for the Fifth and Eighth Circuits issued orders staying, pending judicial review, the SIP disapproval action for the SIPs submitted by Arkansas, Louisiana, Missouri, and Texas.<sup>47</sup> Starting in July 2023, EPA issued interim final rules to comply with these and other court orders by staying the Good Neighbor Plan's requirements for covered facilities in several states, including Texas, beginning with the 2023 ozone season.<sup>48</sup>

On June 27, 2024, the U.S. Supreme Court granted a request from states and industry to stay the Good Neighbor Plan while the case proceeded in the D.C. Circuit.<sup>49</sup> In response, EPA published a final rule to administratively stay the Good Neighbor Plan's requirements for all covered sources where an administrative stay was not already in place.<sup>50</sup> On December 10, 2024, EPA issued a notice to address certain comments submitted on the proposed Good Neighbor Plan that the U.S. Supreme Court concluded EPA had likely not sufficiently addressed in the Plan.<sup>51</sup> In the notice, EPA responded to the comments by more fully explaining why the Good Neighbor Plan appropriately defines each state's obligations, regardless of the status of the rule in other states, and can be implemented without modification in any individual state or combination of states covered by the rule.<sup>52</sup>

### D. Current Status

The Trump Administration plans to roll back the Good Neighbor Plan. On March 12, 2025, EPA Administrator Zeldin announced that "[t]he Trump Administration is a responsive and willing partner in this effort to tackle the so-called 'Good Neighbor Plan' to advance cooperative

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<sup>46</sup> See e.g., *State of Utah v. EPA*, No. 23-09509 (10th Cir. Feb 13, 2023); *State of Texas v. EPA*, Docket No. 23-60069 (5th Cir. Feb 14, 2023); *State of Arkansas v. EPA*, Docket No. 23-01320 (8th Cir. Feb 16, 2023); *Oklahoma v. EPA*, Docket No. 23-9514 (10th Cir. Mar. 2, 2023); *Kentucky v. EPA*, Docket No. 23-3225 (6th Cir. Mar. 17, 2023); *Missouri v. EPA*, Docket No. 23-1719 (8th Cir. Apr. 13, 2023); *Alabama v. EPA*, Docket No. 23-11173, (11th Cir. Apr. 13, 2023); *West Virginia v. EPA*, Docket No. 23-1418 (4th Cir. Apr. 14, 2023); *State of Texas, et al., v. EPA*, Docket No. 23-60300 (5th Cir. Jun. 5, 2023); *Tulsa Cement d/b/a/ Central Plains Cement Co. LLC v. EPA*, Docket No. 23-9551 (10th Cir. Jun. 6, 2023); *Nevada Cement Company v. EPA*, Docket No. 23-1098 (9th Cir. Jun. 6, 2023).

<sup>47</sup> Unpublished Order, *State of Texas v. EPA*, No. 23-60069 (5th Cir. May 1, 2023) (staying SIP disapprovals for Louisiana and Texas); Unpublished Order, *State of Arkansas v. EPA*, No. 23-01320 (8th Cir. May 25, 2023) (staying the SIP disapproval for Arkansas); Unpublished Order, *Union Elec. Co. d/b/a Ameren Missouri v. EPA*, No. 23-1751 (8th Cir. May 26, 2023) (staying the SIP disapproval for Missouri).

<sup>48</sup> 88 Fed. Reg. 49295 (July 31, 2023).

<sup>49</sup> *Ohio v. EPA*, 144 S. Ct. 2040 (2024).

<sup>50</sup> 89 Fed. Reg. 87960 (Nov. 6, 2024).

<sup>51</sup> 89 Fed. Reg. 99105 (Dec. 10, 2024).

<sup>52</sup> *Id.*

federalism and improve air quality across the country.”<sup>53</sup> The press release notes that the “heavy-handed, on-size-fits-all, federal mandate” of the Good Neighbor Plan was “emblematic of a larger regulatory onslaught that guided agency action and rules.”<sup>54</sup>

Texas continues to challenge EPA’s disapproval of the Texas SIP in the Fifth Circuit. On March 25, 2025, a three-judge panel issued a decision upholding EPA’s disapproval.<sup>55</sup> In their briefs, Texas petitioners had cited flaws in EPA’s approach, modeling, and interpretation of the Clean Air Act. However, in evaluating the Texas SIP, the panel concluded that EPA reasonably disapproved the SIP “because it did not satisfy the Good Neighbor Provision even under Texas’s own interpretation.”<sup>56</sup> On May 9, 2025, Texas sought review by the full Fifth Circuit of the panel’s decision upholding EPA’s disapproval of the Texas SIP. EPA opposes the request for review, which is outstanding as of the date of this paper.

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<sup>53</sup> U.S. EPA, “Trump EPA Announces Plan to Work with States on SIPs to Improve Air Quality and Reconsider ‘Good Neighbor Plan’” (Mar. 12, 2025): <https://www.epa.gov/newsreleases/trump-epa-announces-plan-work-states-sips-improve-air-quality-and-reconsider-good>.

<sup>54</sup> *Id.*

<sup>55</sup> *Texas v. United States Env’t Prot. Agency*, 132 F.4th 808 (5th Cir. 2025).

<sup>56</sup> *Id.* at 855.