

EPA's Ambient Air Policy

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Background

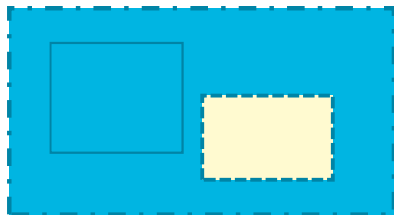
- The current modeling guidelines rely on the definition of “ambient air” to determine the locations surrounding a major source that must be modeled to determine whether the emissions increase from a project will cause or contribute to a modeled violation of a NAAQS or PSD Increment.
- Neither the NSR regulations nor the modeling guidelines define “ambient air,” but instead use the definition in 40 CFR § 50.1(e) – “that portion of the atmosphere, external to buildings, to which the general public has access.”
- Historically, EPA defined “access” as the right or ability to enter, and the “general public” to be the “community at large” in implementing its ambient air definition.
- In more than 40 years of implementation, EPA has issued guidance through numerous memoranda, permit determinations, and comments that expanded the original interpretation of general public and restricted its original interpretation of access.

What is the Problem?




- Several policy memos and decisions cite a 1980 letter from former EPA Administrator Douglas Costle to former U.S. Senator Jennings Randolph, stating that “exemption from ambient air is available only for the atmosphere over land **owned or controlled by the source** and to which public **access is precluded by a fence** or other physical barriers.”
- This policy is excessively conservative and goes beyond the regulatory definition of ambient air, by requiring industry to evaluate impacts anywhere that any person could theoretically access (even by illegally trespassing) rather than considering only locations to which the general public legitimately and realistically has access.
- The policy also requires assessments at locations where the general public would not reasonably be exposed (e.g., on facility property, on a waterway, roadway, railway, or steep terrain) for the duration or averaging time of the current probabilistic NAAQS.

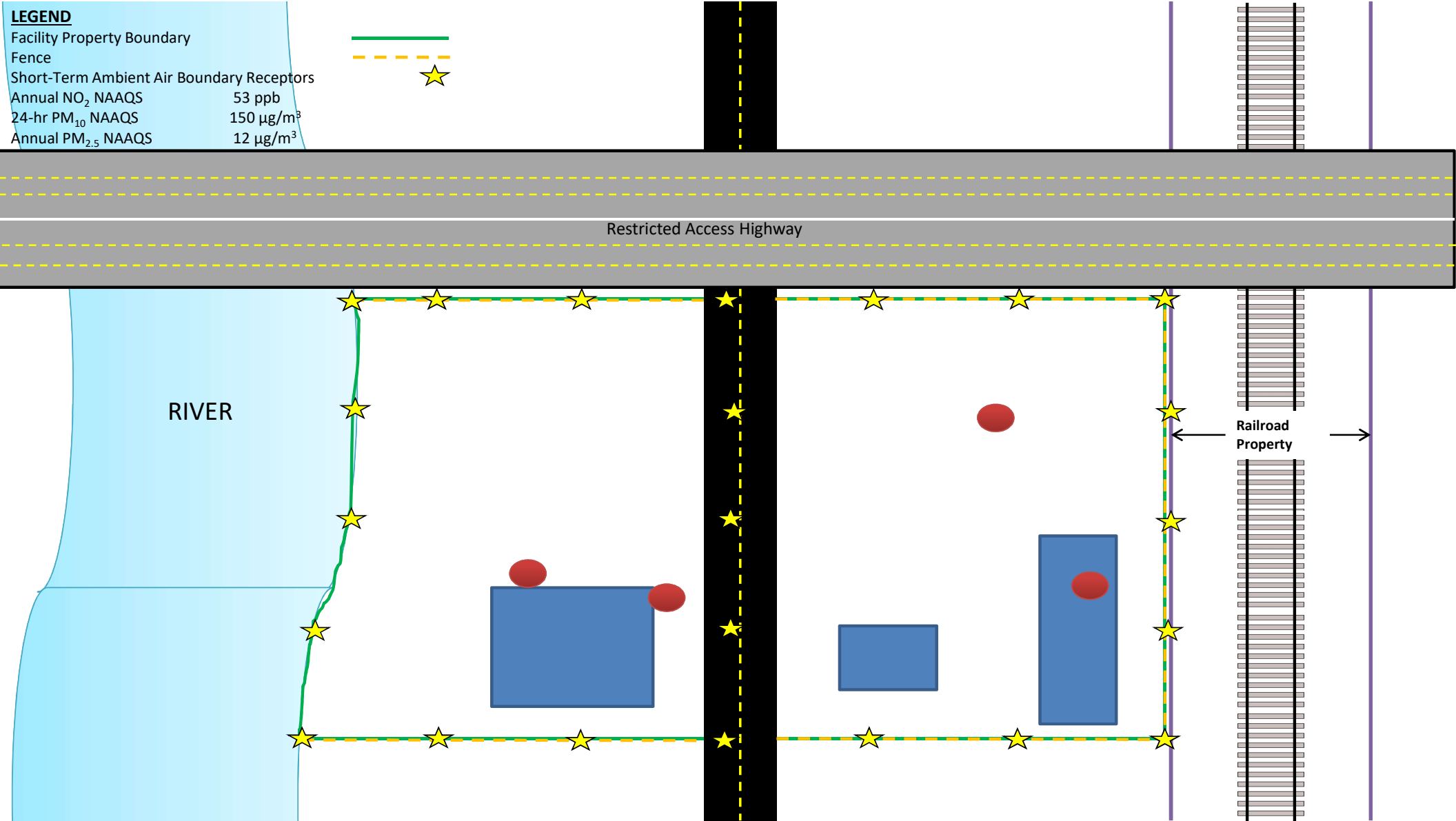
It's Complicated

- EPA's longstanding interpretation has consistently applied the definition of ambient air so as to protect *any* public exposure, regardless of the *likelihood* or *duration* of that exposure.
- Determinations have defined the general public generally to include anyone who is not employed by or under control of a business and are not "business invitees" like contractors or delivery persons.
- 2007 guidance evaluated nine hypothetical scenarios in terms of potentially complex business relationships in which "business invitees," lessors, and lessees might interact and access each other's controlled areas, consistent with conventionally narrow definitions and interpretations of ambient air.



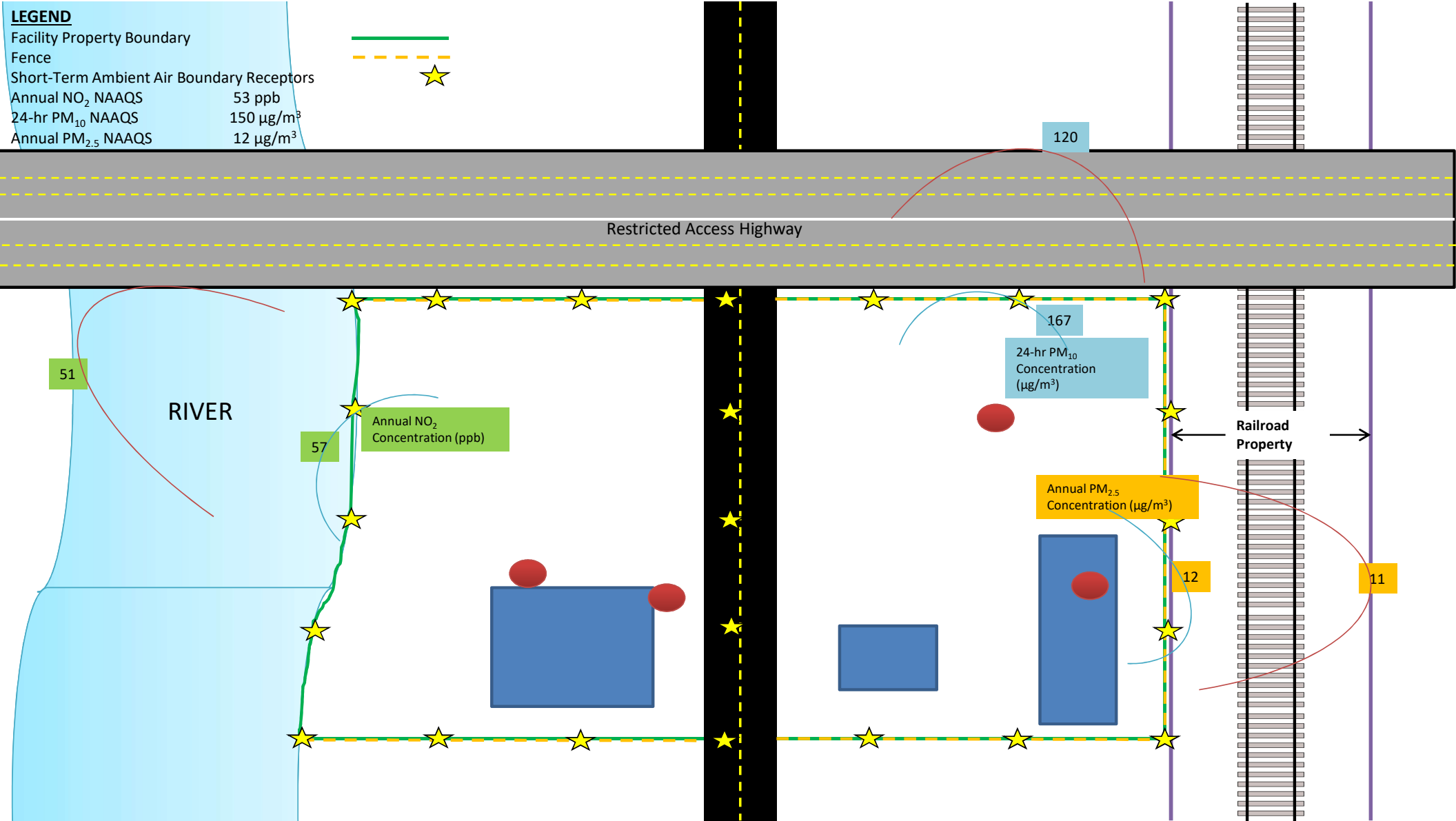
LEGEND

Facility Property Boundary	
Fence	
Short-Term Ambient Air Boundary Receptors	
Annual NO ₂ NAAQS	53 ppb
24-hr PM ₁₀ NAAQS	150 µg/m ³
Annual PM _{2.5} NAAQS	12 µg/m ³



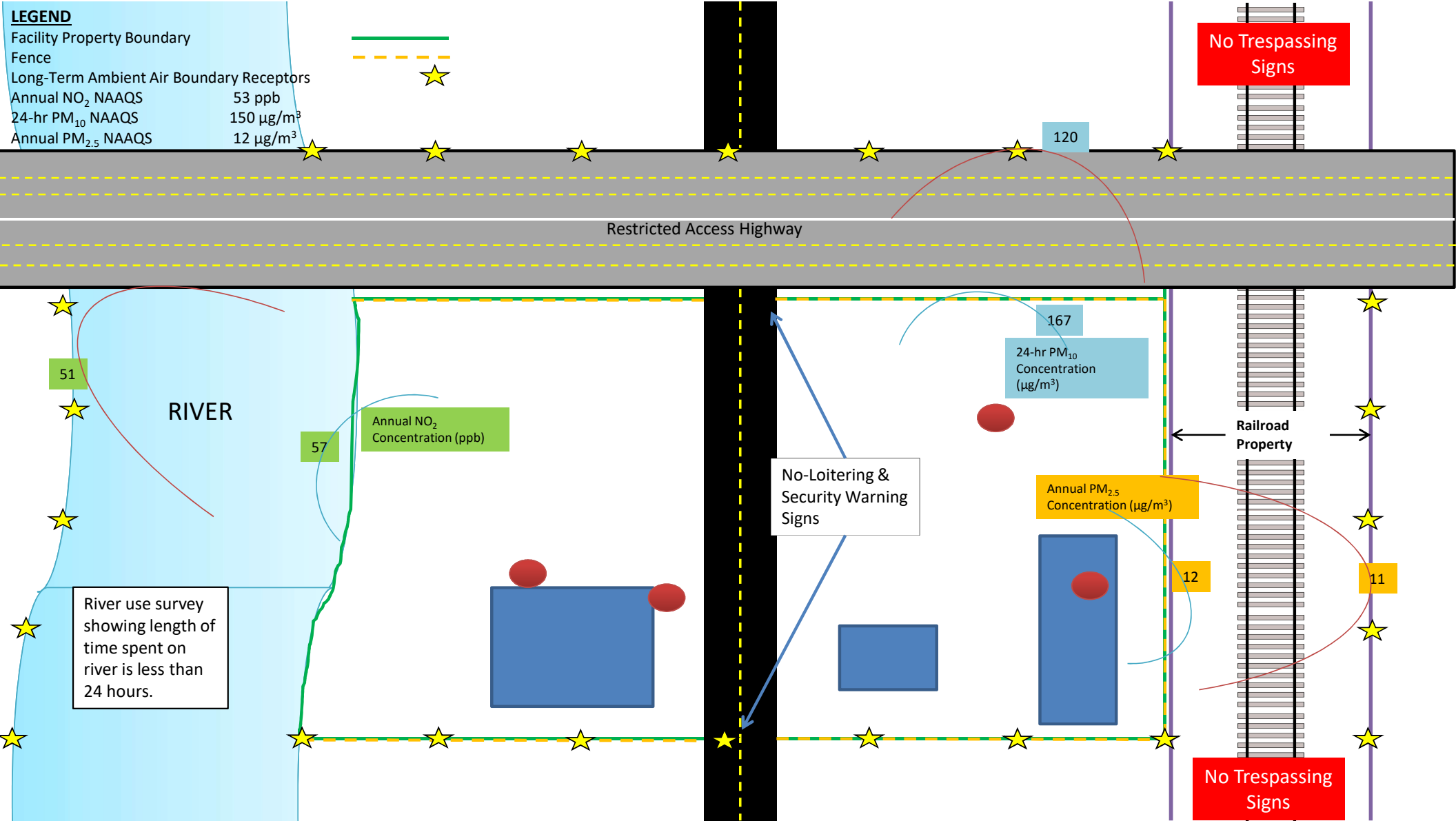
LEGEND

Facility Property Boundary	
Fence	
Short-Term Ambient Air Boundary Receptors	
Annual NO ₂ NAAQS	53 ppb
24-hr PM ₁₀ NAAQS	150 µg/m ³
Annual PM _{2.5} NAAQS	12 µg/m ³



LEGEND

Facility Property Boundary	
Fence	
Long-Term Ambient Air Boundary Receptors	
Annual NO ₂ NAAQS	53 ppb
24-hr PM ₁₀ NAAQS	150 µg/m ³
Annual PM _{2.5} NAAQS	12 µg/m ³



River use survey showing length of time spent on river is less than 24 hours.

No-Loitering & Security Warning Signs

No Trespassing Signs

No Trespassing Signs

Recent Activity Related to EPA's Ambient Air Guidance

- EPA released Draft Ambient Air Guidance for comment in November 2018.
- The draft guidance only proposed to replace “a fence or other physical barriers” with “measures, which may include physical barriers, that are effective in deterring or precluding access to the land by the general public.”
- Environmental groups commented that the proposed change is arbitrary, capricious, and an abuse of agency discretion. The 2018 Policy is also inconsistent with any reasonable interpretation of the statutory term, “ambient air.” Deterring access is not preventing access. It is not sufficient to be reasonably sure that the public will not have access. This is illegal rulemaking through guidance.
- Industry groups commented that the Agency did not go far enough.

Industry Asks on Ambient Air

- Focus on practical access, rather than ownership and control.
- Don't limit to measures employed by source (consider natural features).
- Address roadways, waterways, railways.
- EPA should affirm a reviewing authority's discretion to consider case-specific ambient air and access issues in PSD modeling.
- Change to *“Ambient air does not include the atmosphere over contiguous or adjacent property, when measures or conditions, which may include physical or geographical barriers, effectively deter or preclude access to the land by the general public.”*
- If EPA limits the final guidance to addressing only the access element, then title it *“Revised Policy for Implementing the ‘Access’ Element of the ‘Ambient Air’ Definition.”*

Thank You – Questions?

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