

# **Key Regulatory Policies Impacting Businesses**

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# High Impact Policies in Flux

Status of the Administrative State

Federal Permitting Roadblocks

EPA Risk Management Program

EPA Air Quality Standards

Ozone Good Neighbor Rule

# Growing the Administrative State

## TRACKING THE ADMINISTRATIONS

REGULATORY ACTIVITY FROM INAUGURATION DAY TO SEPTEMBER 1<sup>ST</sup> (Year 3)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
<b>BIDEN</b> <i>2021</i>	<b>655</b>	<b>\$403.3B</b>	<b>232.7M</b>
<b>TRUMP</b> <i>2017</i>	<b>737</b>	<b>\$36.9B</b>	<b>55.6M</b>
<b>OBAMA</b> <i>2009</i>	<b>965</b>	<b>\$228.1B</b>	<b>161.4M</b>

LAST UPDATED: SEPTEMBER 1<sup>ST</sup>, 2023

AMERICANACTIONFORUM.ORG

# Masking Costs and Inflating Benefits of Regulations

- OMB Circular A-4 Proposed Revisions, April 2023
  - Government Wide Policy to Support Aggressive Regulation
  - Hiding Regulatory Costs – only analyze when costs are \$200 M/yr, previously \$100 M/yr
  - Hitting the Accelerator on Costly Regulations – bypasses regulatory oversight of 3<sup>rd</sup> party gov offices
  - Amplifying Claimed Benefits and Downplaying Costs – no longer cost accounting exercise, but encourages use of subjective criteria in policy
  - Expanding Consideration to Include Global Impacts – even though the costs of U.S. regulation are borne at home by businesses and public
  - Constraining Business Community Input – driving input from individuals and community groups over businesses
- “Public Policy Risks Faced by Companies Soar,” U.S. Chamber of Commerce

“The mention of terms in 10-K filings associated with public policy risk (“regulation,” etc.) has increased by 27% in the last decade. ...with non-public policy risk (“economic conditions,” etc.) has remained mostly constant.”

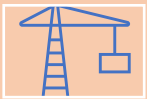
<https://www.uschamber.com/assets/documents/USCC-Public-Policy-Risk-Report.pdf#>

# Federal Permitting Roadblocks

- National Environmental Policy Act (NEPA) of 1970
  - Requires federal agencies to review environmental impacts of infrastructure projects and other actions
  - NEPA permits required for major infrastructure projects: roads, pipelines, transmission lines, ports, airports, etc.
- Since NEPA's enactment, increasingly common litigation target to stop projects
  - 1,500 lawsuits filed between 2001-2013
  - Lawsuits typically claim agency failed to do enough environmental analysis
- Made NEPA permitting overly burdensome and too long
  - Agencies develop 1,700 page documents, litigation proof permits
  - Permits now take 7.7 years airports, 7.4 years road/bridges, 5.3 years transit

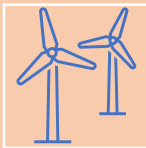


# NEPA Permitting Risks Delaying Investments



## \$1.2 trillion investment through Bipartisan Infrastructure Bill

45,000 bridges and 173,000 miles of road are in poor condition  
No US airports rank in top 25 of airports worldwide  
10 million American households lack safe drinking water  
30 million Americans have no broadband infrastructure



## \$369 billion energy tax incentives under Inflation Reduction Act

1 million miles of transmission lines need permitted next 30 years  
65,000 miles of new CO2 pipelines for carbon capture and sequestration  
80% of expected GHG reductions could be lost



## \$278 billion to advance domestic semi-conductor industry

Mining demand for critical minerals is rapidly growing  
7-10 years to get a mining permit in the U.S., 2-3 years in Australia and Canada

# Increasing Complexity of Permitting Regulations

- NEPA Phase 1 Regulation (May 2022 final)
  - Allows agencies to go beyond CEQ's model regulations
  - Introduces subjective criteria for agencies to consider, environ. effects
- NEPA Phase 2 Regulations (July 2023 proposed)
  - Moves NEPA from process to action forcing statute
  - Requires mitigation, plus monitoring and enforcement plan
  - Makes agencies choose “environmentally preferable alternative”
  - Skips implementation of NEPA streamlining from recently passed legislation
- Chamber Campaign “Permit America to Build”

# EPA Risk Management Program

## Background

- Clean Air Act program
- Originally issued 1996, multiple updates since
- Chemical accident, air release, prevent program
- Identify steps to prevent
- Establish emergency response procedures
- 140 toxic or flammable substances regulated
- 11,7400 facilities covered

## EPA's Concerns

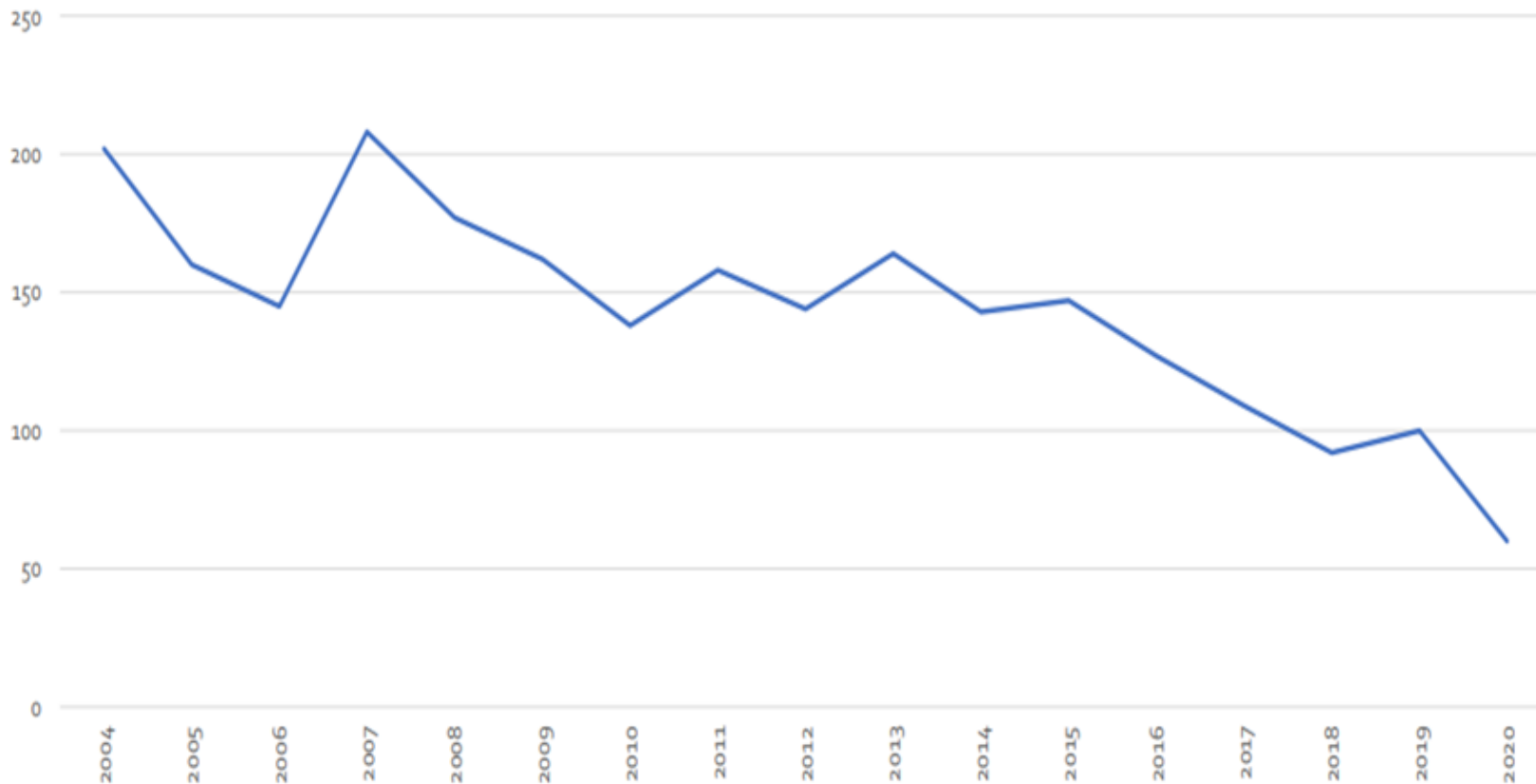
- RMP covered facilities near minority communities
  - 50% people color live within 1 mile
  - 42% low income people live within 1 mile
- Many communities near multiple RMP facilities
- Risk of exposure to accidental air releases

## Regulatory History

- 2017 Rule
  - Driven by 2013 fertilizer facility explosion in TX (2018 found to be a result of criminal conduct not an accident)
  - Added emergency response, info disclosure, rigorous prevention program
- 2019 Rule
  - Rescinded 2017 rule
- 2022 Proposed Rule
  - Expands info disclosure, emergency response, other provisions



# EPA Proceeding While Accidents Dropping



97% of all RMP facilities had no RMP reportable accidents

Most RMP reportable accidents occurred at facilities with complex processes.

# 2020 RMP Regulation Requirements

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NATURAL HAZARDS AND  
POWER LOSS EVALUATION  
EMPHASIZED



FACILITY SITING  
EVALUATION EMPHASIZED



SAFER TECHNOLOGIES AND  
ALTERNATIVES ANALYSIS  
(STAA)



ROOT CAUSE ANALYSIS  
INCIDENT INVESTIGATION



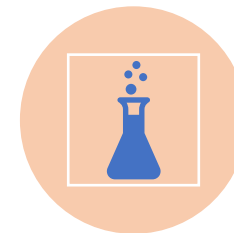
THIRD PARTY COMPLIANCE  
AUDITS



ENHANCED EMPLOYEE  
PARTICIPATION



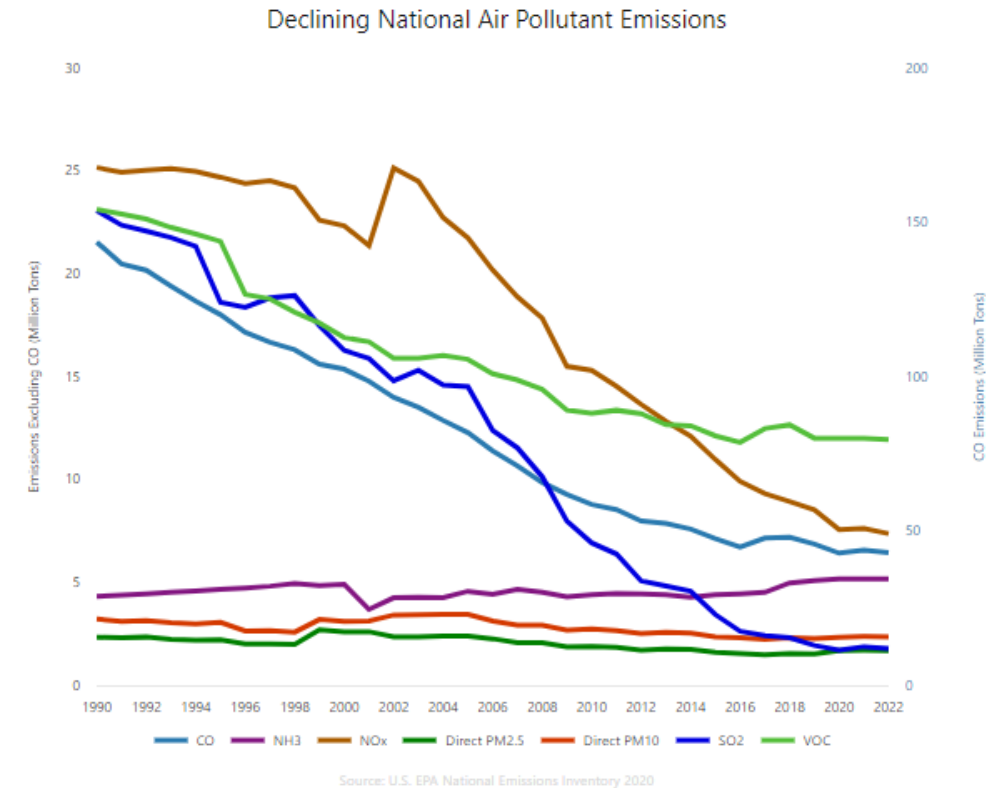
ENHANCED COMMUNITY  
NOTIFICATION OF  
CHEMICAL RELEASES



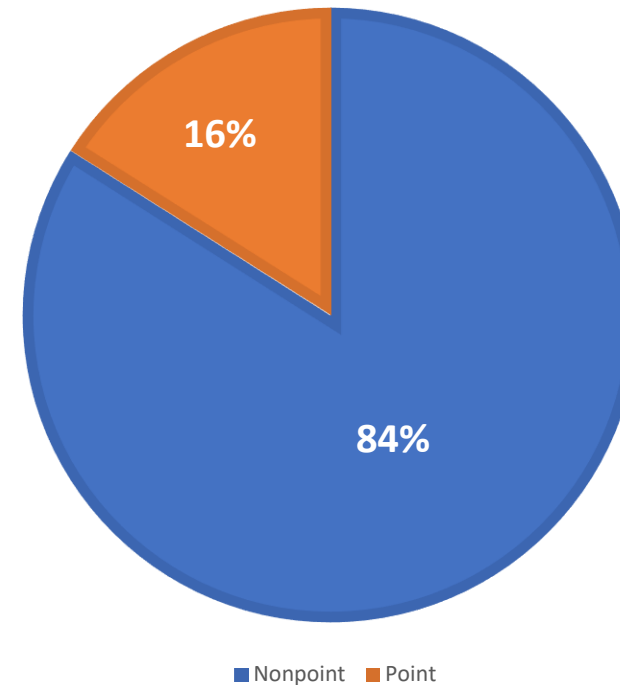
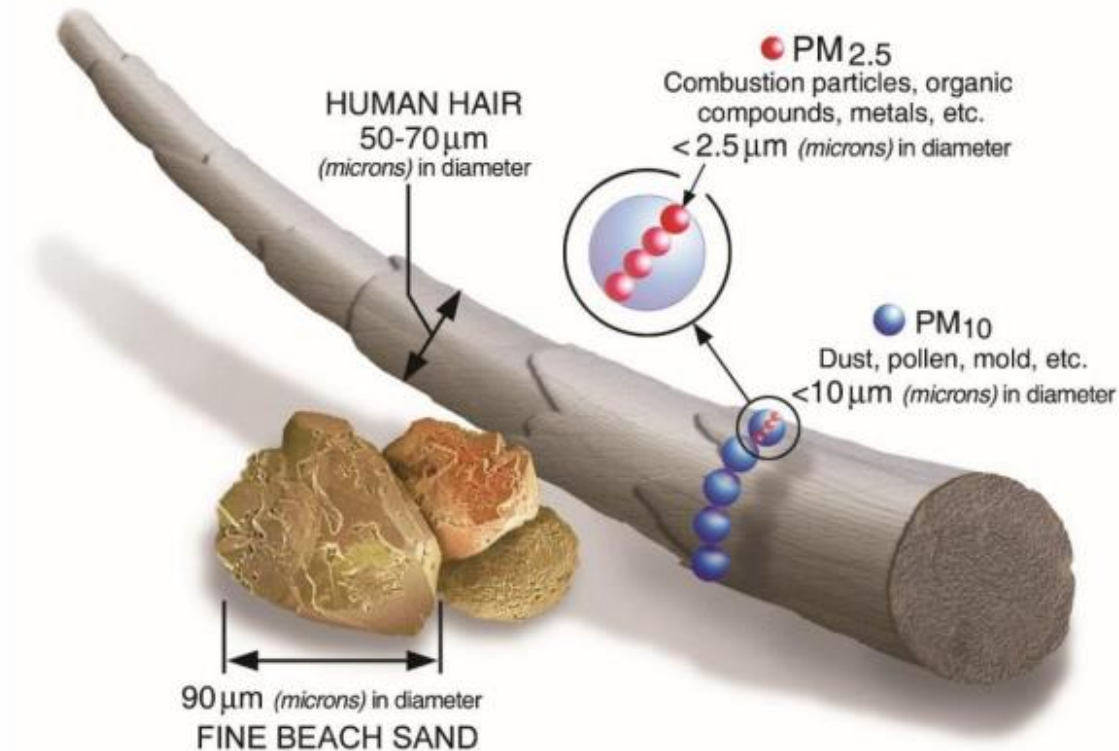
ENHANCED INFORMATION  
AVAILABILITY OF CHEMICALS

# National Ambient Air Quality Standards (NAAQS)

- EPA required to revisit every 5 years
  - Ozone, Particulate Matter, SO<sub>2</sub>, NO<sub>x</sub>, Lead, Carbon Monoxide
  - Two Types of Standards: Primary (human health) and Secondary (vegetation, wildlife)
- Ozone (primary)
  - Last week EPA started over by halting the 2020 reconsideration
- SO<sub>2</sub>, NO<sub>x</sub>, PM (secondary)
  - Court deadline propose 2/2023, final 12/2024 standards
- Particulate Matter (primary)
  - EPA proposed tightening in January 2023, final rule by end of year



# PM NAAQS: What Is PM<sub>2.5</sub> and Their Sources



## Point Sources (16%)

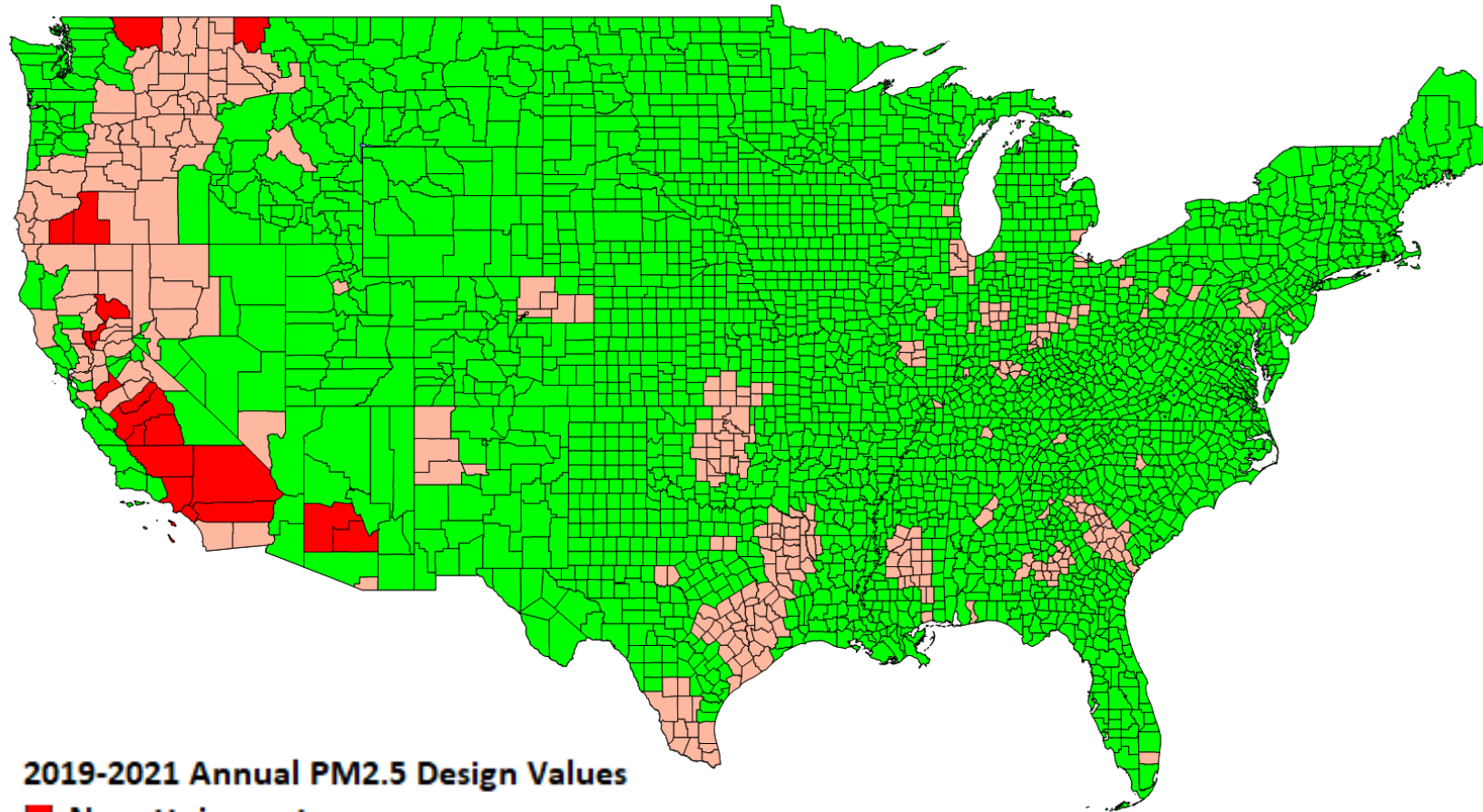
- Power (11%)
- Industrial (5%)

## Non-Point Sources (84%)

- Fires (43%)
- Road Dust (16%)
- Ag Dust (14%)
- Other (6%)
- Cars/Trucks (5%)

Source: U.S. EPA's Policy Assessment for PM NAAQS  
[https://www.epa.gov/system/files/documents/2022-05/Final%20Policy%20Assessment%20for%20the%20Reconsid%20of%20the%20PM%20NAAQS\\_May2022\\_0.pdf](https://www.epa.gov/system/files/documents/2022-05/Final%20Policy%20Assessment%20for%20the%20Reconsid%20of%20the%20PM%20NAAQS_May2022_0.pdf)

# PM NAAQS: Current PM<sub>2.5</sub> Nonattainment Areas



2019-2021 Annual PM<sub>2.5</sub> Design Values

- Nonattainment
- 1-3 ug/m<sup>3</sup> headroom
- +3 ug/m<sup>3</sup> headroom

## Current Standards (12 ug/m<sup>3</sup>)

- Most projects can be built
- Leaves room for economic growth

## Nonattainment Areas (Red)

- 20 counties in nonattainment
- Difficult to site new facility/modify existing
- Require most stringent permitting and emissions controls (LAER/NSR analysis)
- Purchase emissions offsets

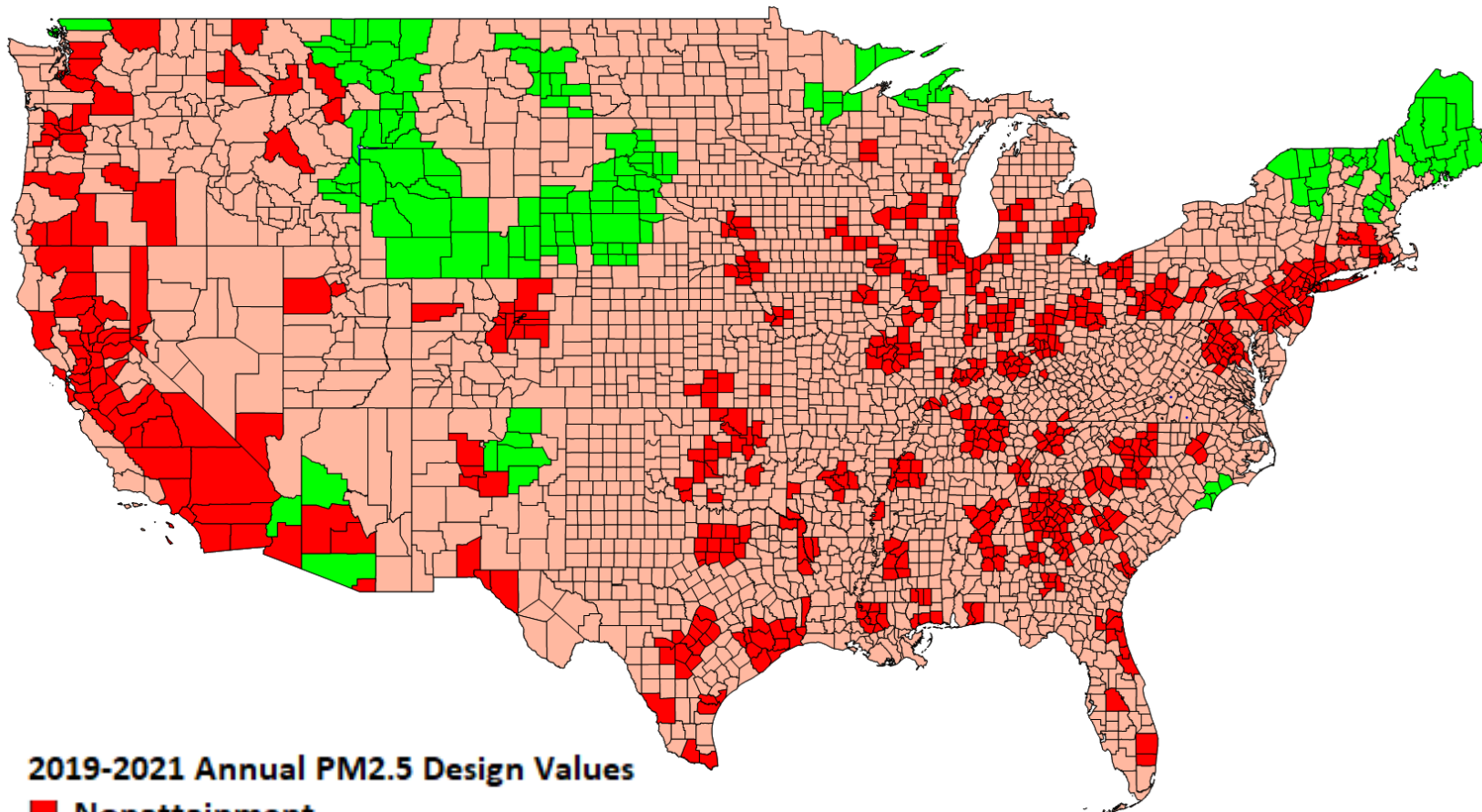
## Almost Non-Attainment (Pink)

- Air modeling must show won't harm air quality
- EPA assumes max. allowable emissions rate from facility

## Attainment Area (Green)

- Current levels of 6-9 ug/m<sup>3</sup> so sufficient headroom to permit new facilities

# PM NAAQS: Impact of Dropping PM<sub>2.5</sub> NAAQS to 8.0 µg/m<sup>3</sup>



2019-2021 Annual PM<sub>2.5</sub> Design Values

- Nonattainment
- 1-3 ug/m<sup>3</sup> headroom
- +3 ug/m<sup>3</sup> headroom

## If Standards Drop to 8.0 ug/m<sup>3</sup>, may:

- Block air permits for new/expanded manufacturing
- Push manufacturing offshore or other states
- Prevent transportation projects from being built
- Threaten close to \$200B in economic activity and 1M jobs at risk

## Nonattainment Areas (Red)

- 647 counties (22% of U.S. counties) would be out of attainment
- Very difficult to site new/modify existing facilities
- Require most stringent permitting and controls (LAER/NSR analysis)
- Increasingly costly emissions offsets due to higher demand

## Almost Non-Attainment (Pink)

- Most of the country would have limited headroom
- Increasing permitting challenges

## Attainment Area (Green)

- Few areas left to build
- Mostly in isolated, lower populated areas

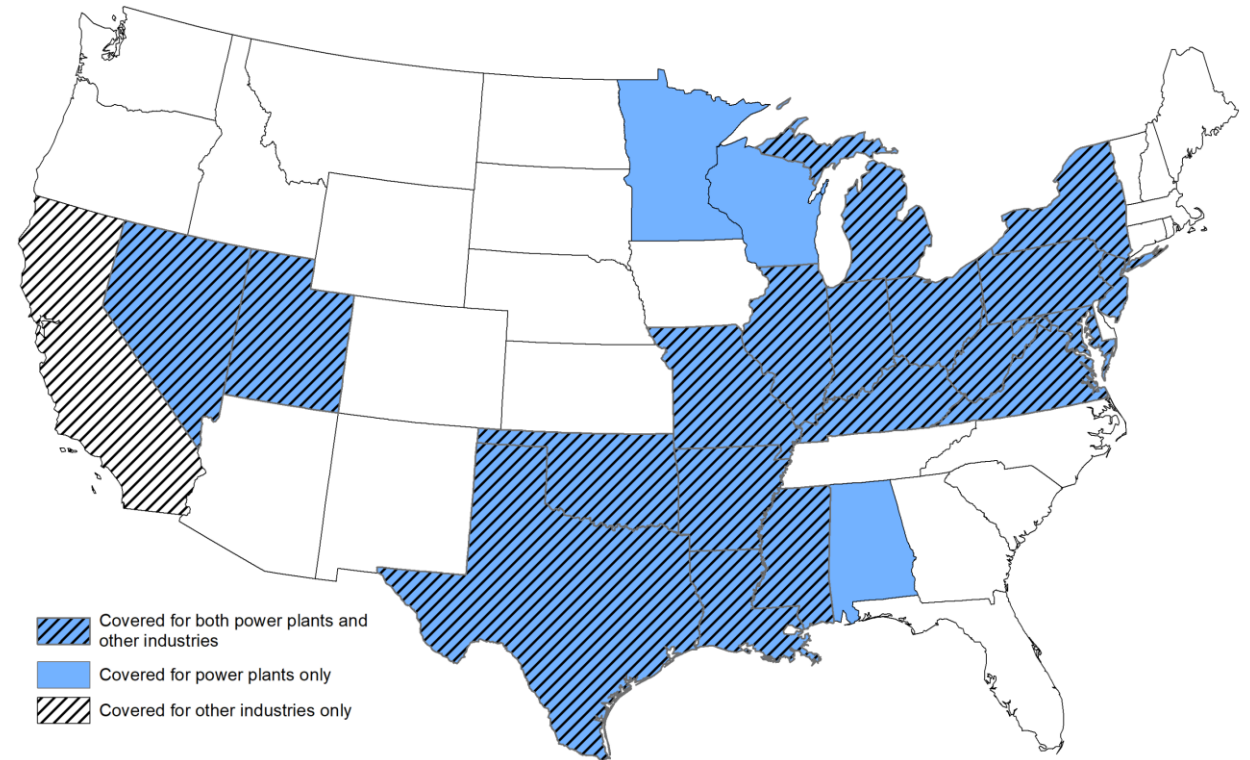
# EPA Good Neighbor Plan for 2015 Ozone NAAQS

- Brief History of ozone rules:
  - 1995 – Acid Rain Program (NO<sub>x</sub> emissions rates)
  - 1998 – Ozone Transport – NO<sub>x</sub> SIP Call Rule
  - 2005 – Clean Air Interstate Rule (CAIR)
  - 2011 - Cross-State Air Pollution Rule (CSAPR)
  - 2016 – CSAPR Update Rule
  - 2021 – Revised CSAPR Update
- 2023 – Good Neighbor Plan FIP
  - Reduce emissions to achieve 2015 Ozone NAAQS
  - January 2023, EPA disapproved 21 State Implementation Plans
  - March 2023, EPA issued Good Neighbor final rule



# EPA Good Neighbor Plan for 2015 Ozone NAAQS

- 23 States Covered
  - 1<sup>st</sup> time to include western states – UT, NV, CA
- Power Sector
  - 50% NO<sub>x</sub> reduction by 2027
  - Run SCR year-around
- Industry Sectors Covered
  - 1<sup>st</sup> time covering industrial sources
  - Cement, Iron/Steel, Glass, Pulp&Paper, Solid Waste Incinerators
  - 15% NO<sub>x</sub> reduction by 2026
- EPA indicated intention to review air transport for 6 additional states
  - AZ, IA, KS, NM, TN, WY
- So much litigation, EPA froze implementation in 12 of 23 states





# Thank you!

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