FEDERAL REGULATORY UPDATE

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FEDERAL REGULATORY UPDATE

Air

- NAAQS PM2.5
- Oil and Gas NSPS
- Risk Management Program
- Policies
- Climate

Water

- WOTUS
- 401 Rule

Environmental Justice

Compliance and Enforcement

Questions and Comments

2022 Federal Regulatory Update
2023 Federal Regulatory Update
available at
www.bswenviroblog.com

NAAQS PM2.5

- Primary annual PM2.5 standard - 12.0 to µg/m^3 to 9.0 µg/m ^{3}
  Published 89 Fed. Reg. 16202 (March 6, 2024)
  Effective 60 days after publication
- Appeal filed on March 6 in D.C. Circuit

EPA United States Environmental Protection Agency

Main Elements of the PM NAAQS Final Decision

- EPA is **strengthening the level of the primary (health-based) annual standard for fine particles** ($PM_{2.5}$) to 9.0 micrograms per cubic meter (µg/m^3) to reflect the latest available health science.
- EPA is **not changing all other PM standards**:
  - The primary (health-based) and secondary (welfare-based) 24-hour $PM_{2.5}$ standards stay at the level of 35 µg/m^3
  - The primary and secondary 24-hour PM_{10} standards stay at the level of 150 µg/m^3
  - The secondary annual $PM_{2.5}$ standard stays at the level of 15.0 µg/m^3

NAAQS PM2.5

NAAQS PM2.5

« Back to DEQ's Main Website

DEQ LOUISIANA

Air Monitoring Data & AQI

Current AQI Data | Forecast | Regional 8 Hour Ozone Data | Regional Hourly Ozone Data | Site Data | Notifications

Site Map: | Pollutant: PM2.5 | By Region: Baton Rouge Area Go | OR | By Site: -- Select Site -- Go

Current Monitoring Data & AQI for PM2.5 in the Baton Rouge Area

Baton Rouge Capitol Site

39 PM25 — Good
9.436 UG/M3
2/27/2024 1:00 PM

French Settlement Site

36 PM25 — Good
8.71 UG/M3
2/27/2024 1:00 PM

Port Allen Site

52 PM25 — Moderate
12.489 UG/M3
2/27/2024 1:00 PM

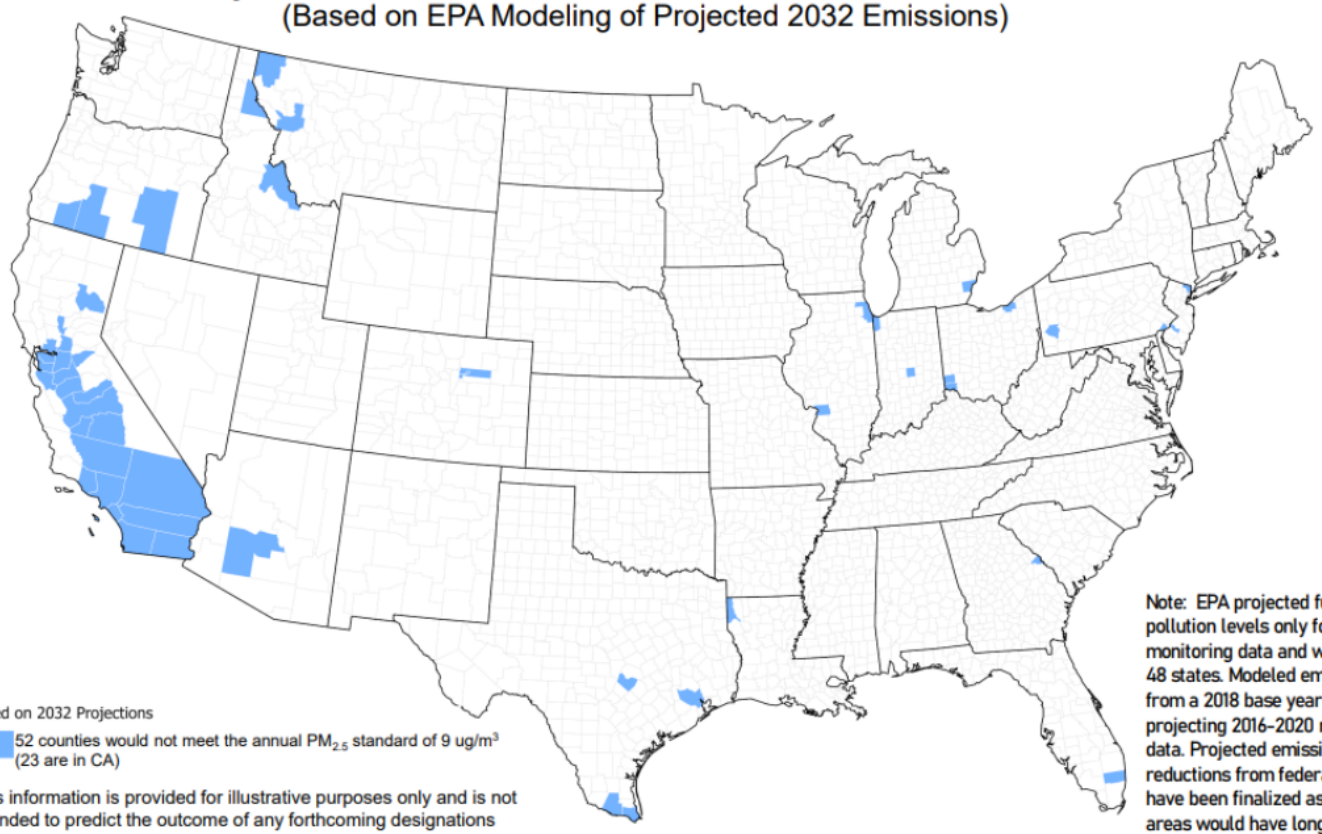
NAAQS PM2.5

EPA United States Environmental Agency

EPA Projects More than 99% of Counties would Meet the Revised Fine Particle Pollution Standard

Projection of Counties with Monitors that would not Meet in 2032

(Based on EPA Modeling of Projected 2032 Emissions)



Based on 2032 Projections

52 counties would not meet the annual $PM_{2.5}$ standard of 9 ug/m^3 (23 are in CA)

This information is provided for illustrative purposes only and is not intended to predict the outcome of any forthcoming designations process.

Note: EPA projected future fine particle pollution levels only for counties with monitoring data and within the contiguous 48 states. Modeled emissions are developed from a 2018 base year and used in projecting 2016-2020 monitoring data. Projected emissions reflect expected reductions from federal regulations that have been finalized as of March 2023. Some areas would have longer than 2032 to attain the revised $PM_{2.5}$ standard.

NAAQS PM2.5

EPA United States Environmental Protection Agency

Hypothetical Scenarios

A facility has a final permit in hand before the effective date of new standard

- Project moves ahead
- No new air permitting requirements
- Permit issued

A facility has a permit in process when new standard takes effect – likely to be issued by a state or local air agency

- Compare current air quality modeling results to the new standard level, working with permitting agency
- Evaluate if additional air pollution emissions reductions are needed
- Permit issued

Plans for building new facility or expanding an existing one

- Work with permitting agency to estimate how much particle pollution will be emitted and choose best available air pollution control technology
- Demonstrate compliance with Clean Air Act requirements
- Permit issued

Plans for building new facility or expanding one in an area not meeting the new standard (permit needed after EPA designations process is completed – likely in or after 2026)

- Work with permitting agency to estimate how much particle pollution will be emitted and choose pollution controls with lowest achievable emission rate
- Demonstrate compliance with Clean Air Act requirements
- Permit issued

NAAQS PM2.5

EPA United States Environmental Protection Agency

Designations/Implementation Timeline

The Clean Air Act directs EPA and states to take the following actions to deliver public health benefits following promulgation of a new/revised $PM_{2.5}$ NAAQS:

- **Stationary source permitting.**
  - Prevention of Significant Deterioration (attainment area permitting) applies with respect to a new standard in all areas of the U.S. designated attainment for the pollutant upon the effective date of the new standard.
  - Nonattainment New Source Review applies in areas designated nonattainment for the pollutant, which includes any areas newly designated nonattainment at/after the effective date of nonattainment designations.
- **Within 2 years after a final NAAQS:** For areas with available information, EPA must "designate" areas as meeting (attainment areas) or not meeting (nonattainment areas) the final NAAQS considering the most recent air quality monitoring data and input from states and tribes. All $PM_{2.5}$ nonattainment areas are initially designated as "Moderate."
- **Within 3 years after a final NAAQS:** Clean Air Act section 110 requires all states to submit state implementation plan revisions to show they have the basic air quality management program components in place to implement the final NAAQS.
- **Within 18 months after the effective date of designations:** Nonattainment area $PM_{2.5}$ state implementation plans are due.
- **End of the 6th calendar year after the effective date of designations**: "Moderate" area attainment date.

Oil and Gas NSPS

- Obama Administration
  - 2012 NSPS Rule, 77 FR. 49490 (Aug. 16, 2012) at 40 CFR 60, Subpart OOOO
  - 2016 NSPS Rule, 81 FR 35824 (June 3, 2016) at 40 CFR 60, Subpart OOOOa

- Trump Administration
  - Policy Rule, 85 Fed. Reg. 57018 (Sep. 14, 2020)
  - Technical Rule, 85 Fed. Reg. 57398 (Sep. 15, 2020)

- Biden Administration
  - EO 13990 (Jan. 20, 2021)
    - Required all federal agencies to review all rules issued under Trump Administration
    - Required EPA to consider suspending Trump-era Oil and Gas NSPS
  - Congressional Review Act
    - Passed legislation disapproving the Policy Rule, signed June 30, 2021
  - Proposal to revise Oil & Gas NSPS - 86 Fed. Reg. 63110 (November 15, 2021)
    - No proposed regulatory text; would apply to existing sources
    - Add Subpart OOOOb - update requirements for new sources (after 11/15/21)
    - Add Subpart OOOOc - emission guidelines for states as to methane from this source category
  - Supplemental Proposal - 87 Fed. Reg. 74702 (December 6, 2022)
    - Purpose is to update, strengthen, and expand the proposed Nov. 2021 standards …
      - For methane and VOC emissions from new, modified, and reconstructed facilities
      - For methane emissions from existing sources

Oil and Gas NSPS

- Final Rule - Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 89 Fed. Reg. 16820 (March 8, 2024)

Crude Oil and Natural Gas Operations: Where EPA's Rules Apply

Production & Processing

EPA's methane proposal covers equipment & processes at:

1. Onshore well sites
2. Storage tank batteries
3. Gathering & boosting compressor stations
4. Natural gas processing plants

Natural Gas Transmission & Storage

EPA's methane proposal covers equipment & processes at:

5. Compressor stations
6. Storage tank batteries

Distribution

(not covered by EPA rules)

7. Distribution mains/services
8. City gate
9. Regulators and meters for customers

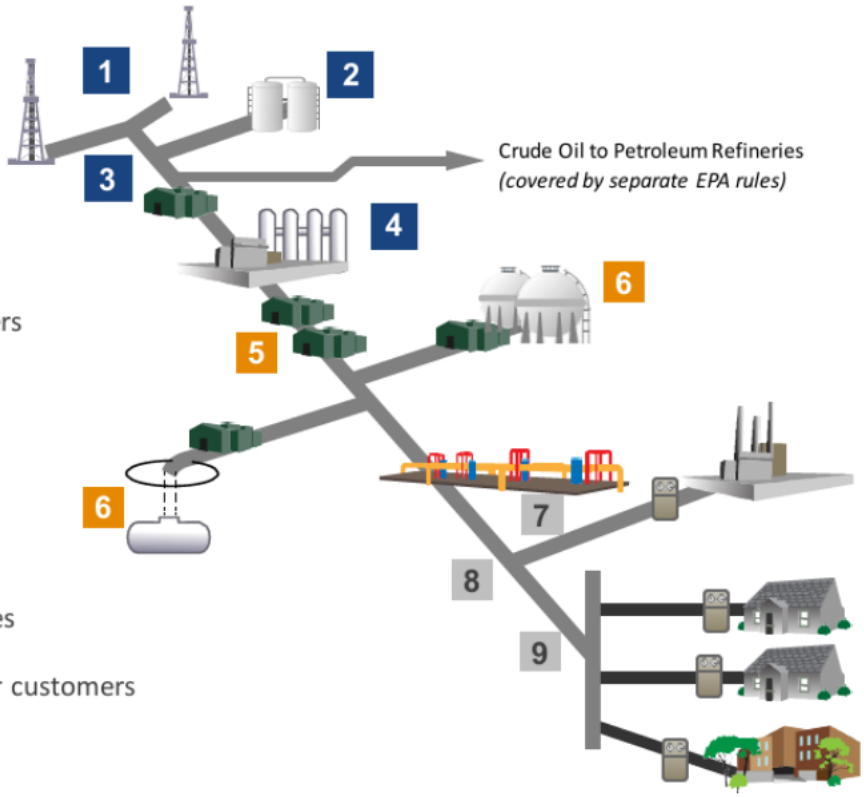


Figure adapted from American Gas Association and EPA's Natural Gas STAR Program

Oil and Gas NSPS

EPA

Oil and Natural Gas Sources Covered by EPA's Final New Source Performance Standards (NSPS) and Emissions Guidelines, by Site

Location and Equipment or Process Covered	Required to Reduce Emissions under EPA Rules	Rules that Apply			
		2012 NSPS for VOCs (OOOO)	2016 NSPS for Methane & VOCs (OOOOa)	2023 Final NSPS for Methane & VOCs (OOOOb)	2023 Final Emissions Guidelines for Methane (OOOOc)
Oil and Natural Gas Well Sites					
Completions of hydraulically fractured wells	✓	●	●	●	
Compressors at centralized tank batteries	✓			●	●
Fugitive emissions	✓		●	●	●
Liquids unloading	✓			●	●[1]
Process controllers	✓	●	●	●	●
Process pumps	✓		●	●	●
Storage vessels	✓	●	●[3]	●	●
Sweetening units	✓	●[2]	●[2]	●[2]	●[2]
Associated gas from oil wells	✓			●	●
Natural Gas Gathering and Boosting Compressor Stations					
Compressors	✓	●	●	●	●
Fugitive emissions	✓		●	●	●
Process controllers	✓	●	●	●	●
Process pumps	✓			●	●
Storage vessels	✓	●	●[3]	●	●
Sweetening units	✓	●[2]	●[2]	●[2]	●[2]
Natural Gas Processing Segment					
Compressors	✓	●	●	●	●
Fugitive emissions	✓		●	●	●
Process controllers	✓	●	●	●	●
Process pumps	✓		●	●	●
Storage vessels	✓	●	●[3]	●	●
Sweetening units	✓	●[2]	●[2]	●[2]	●[2]
Transmission and Storage Segment					
Compressors	✓		●	●	●
Fugitive emissions	✓		●	●	●
Process controllers	✓		●	●	●
Process pumps	✓			●	●
Storage vessels	✓	●	●[3]	●	●

Notes: All sources listed above are covered by EPA's Super Emitter Program
Process controllers and pumps are also called pneumatic controllers and pneumatic pumps

[1] Added in 2023 final rule.
[2] Covered for SO_2 only.
[3] Covered for VOCs only.

Oil and Gas NSPS

What sources are covered by the rules and when do they take effect?

Subpart	Source Type	Applicable Dates
40 CFR part 60, subpart OOOO **(2012 NSPS for VOC)**	New, modified, or reconstructed sources	After August 23, 2011, and on or before September 18, 2015
40 CFR part 60, subpart OOOOa **(2016 NSPS for VOC and Methane)**	New, modified, or reconstructed sources	After September 18, 2015, and on or before December 6, 2022
40 CFR part 60, subpart OOOOb **(2023 NSPS for VOC and Methane)**	New, modified, or reconstructed sources	After December 6, 2022
40 CFR part 60, subpart OOOOc **(2023 EG for Methane)**	Existing sources	On or before December 6, 2022

The effective date for this rule is 60 days after *Federal Register* publication

Oil and Gas NSPS

The Super Emitter Program: Background

A Super-Emitter event is an emission event which represents an emission that is >100 kg/hr and may have been emitted from one or more of the following:

- An affected facility or associated equipment subject to regulation under NSPS OOOO, OOOOa, or OOOOb
- A designated facility or associated equipment subject to a state or Federal Plan promulgated pursuant to EG OOOOc
- An unregulated source

- EPA has created a "third-party notifier" of super-emitter events
  - Qualifications: Apply to EPA, be a person, and use an approved detection method
    - Satellite detection of methane emissions.
    - Remote-sensing equipment on aircraft
    - Mobile monitoring platforms.
  - EPA certifies entity as a third-party notifier

- Third party notifier provides information to EPA
  - EPA assign a notification ID number, notifies the owner / operator, and posts the notification

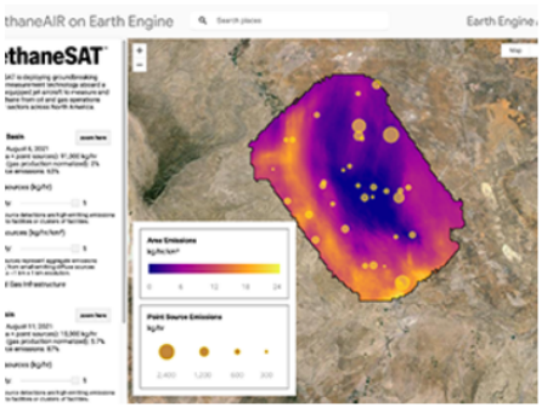
- Owner/operator must take specified actions …
  - Initiate super-emitter event investigation within 5 days of notice, complete within 15 days of notice
  - Submit report of super-emitter investigation within 15 days of notice
  - EPA will post the report

Oil and Gas NSPS

LATEST UPDATES

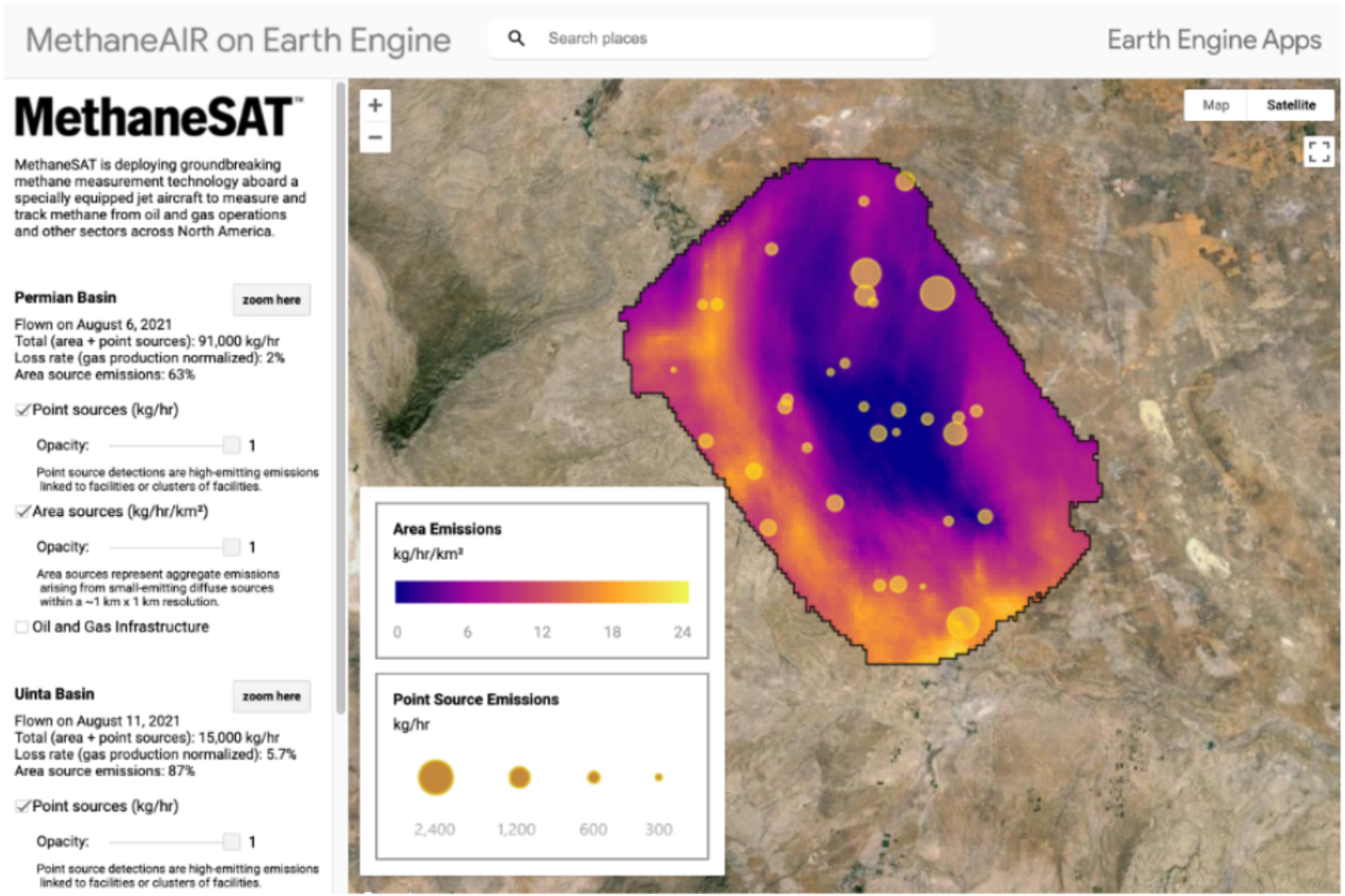
IN ORBIT: Successful MethaneSAT launch represents groundbreaking mission to protect the climate

Space: The next frontier for climate action and accountability



Google partnership will help turn MethaneSAT data into global methane action

Oil and Gas NSPS



MethaneSAT data will now be accessible through Google Earth Engine.

Oil and Gas NSPS

Fugitive Emissions	Will ensure that **all** well sites, centralized production facilities, and compressor stations are routinely monitored for leaks

Fugitive emissions - any indication of emissions observed from a fugitive emissions component using AVO, an indication of visible emissions observed from an OGI instrument, or an instrument reading of 500 ppmv or greater using Method 21

Fugitive emissions component - any component that has the potential to emit fugitive emissions of methane or VOC at a well site, centralized production facility, or compressor station, such as …

- Valves (including separator dump valves)
- Connectors
- Pressure relief devices
- Thief hatches or other openings on a storage vessel
- Compressors,
- Instruments and meters
- Yard piping

Oil and Gas NSPS

Fugitive Emissions	Will ensure that **all** well sites, centralized production facilities, and compressor stations are routinely monitored for leaks

Single Wellhead-Only Well Sites and Small Well Sites.	• Quarterly AVO surveys. AVO (audible, visual and olfactory) surveys are inspections where inspectors listen, look and smell for leaks. • First attempt at repair within 15 days after detecting fugitive emissions. Final repair within 15 days after first attempt. • Fugitive monitoring continues for all well sites until the site has been closed, including plugging the wells at the site and submitting a well closure report.

Oil and Gas NSPS

Fugitive Emissions	Will ensure that **all** well sites, centralized production facilities, and compressor stations are routinely monitored for leaks

Fugitive Emissions: Multi-Wellhead Only Well Sites (two or more wellheads).	• Quarterly AVO surveys. First attempt at repair within 15 days after detecting fugitive emissions. Final repair within 15 days after first attempt. • Semiannual optical gas imaging (OGI) monitoring. (Optional semiannual EPA Method 21 monitoring with 500 ppm defined as a leak.) • First attempt at repair within 30 days after detecting fugitive emissions. Final repair within 30 days after first attempt. • Fugitive monitoring continues for all well sites until the site has been closed, including plugging the wells at the site and submitting a well closure report.

Oil and Gas NSPS

Fugitive Emissions	Will ensure that **all** well sites, centralized production facilities, and compressor stations are routinely monitored for leaks

Fugitive Emissions: Well Sites with Major Production and Processing Equipment and Centralized Production Facilities.	• Bimonthly AVO surveys (i.e., every other month). First attempt at repair within 15 days after detecting fugitive emissions. Final repair within 15 days after first attempt. AND • Well sites with specified major production and processing equipment: Quarterly OGI monitoring. (Optional quarterly EPA Method 21 monitoring with 500 ppm defined as a leak). • First attempt at repair within 30 days after detecting fugitive emissions. Final repair within 30 days after first attempt. • Fugitive monitoring continues for all well sites until the site has been closed, including plugging the wells at the site and submitting a well closure report.

Oil and Gas NSPS

Fugitive Emissions	Will ensure that **all** well sites, centralized production facilities, and compressor stations are routinely monitored for leaks
Well Liquids Unloading.	• Perform best management practices (BMP) to minimize or eliminate methane and VOC emissions to the maximum extent possible from liquids unloading events that vent emissions to the atmosphere.
Storage Vessels: A Single Storage Vessel or Tank Battery with PTE[4] of 6 tpy or more of VOC or PTE of 20 tpy or More of Methane.	• 95 percent reduction of VOC and methane.
Equipment Leaks at Natural Gas Processing Plants.	• Leak detection and repair (LDAR) with OGI following procedures in appendix K. Alternatively, LDAR using EPA Method 21 (leak definition varies by component type).

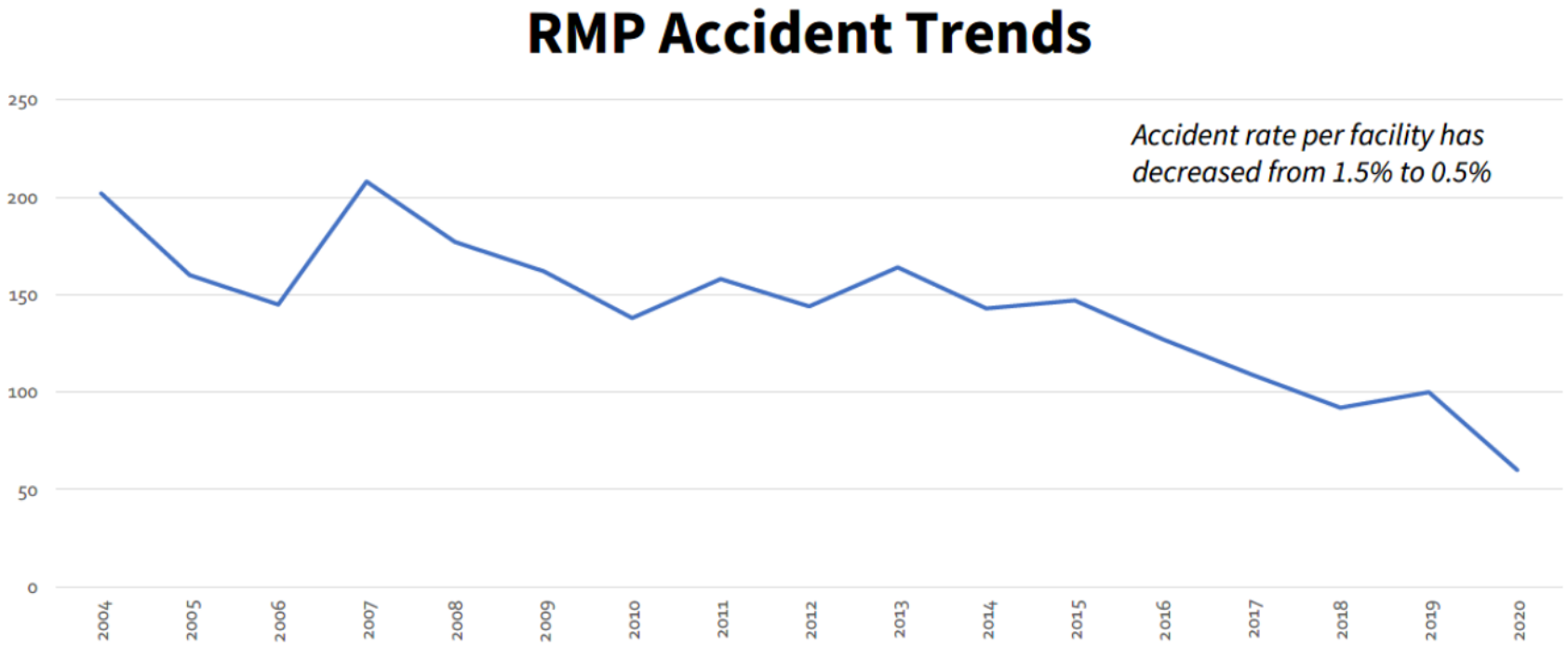
Oil and Gas NSPS

Associated Gas

Prohibits routine flaring from new sources and provides industry with time to comply

New Wells with Associated Gas that Commenced Construction after 790 Days after Date of Publication in the Federal Register.	• Route associated gas to a sales line; or, the gas can be used for another useful purpose that a purchased fuel, chemical feedstock, or raw material would serve, or recovered from the separator and reinjected into the well or injected into another well.
New Wells with Associated Gas that Commenced Construction Between 60 Days after Date of Publication in the Federal Register, and 790 days After Date of Publication in the Federal Register.	• Route associated gas to a sales line; or, the gas can be used for another useful purpose that a purchased fuel, chemical feedstock, or raw material would serve, or recovered from the separator and reinjected into the well or injected into another well. • If demonstrated, and documented annually, that routing to a sales line and the alternatives are not technically feasible, the associated gas can be routed to a flare or other control device that achieves at least 95 percent reduction in GHG (methane) and VOC emissions. A second infeasibility determination may not extend beyond 24 months from effective date.

Risk Management Program



- **97% of all RMP facilities had no RMP reportable accidents.**
- **Most RMP reportable accidents occurred at facilities with complex processes.**

Source: EPA

Risk Management Program

Recent RMP Rule Milestones

- **January 2017 RMP Amendments Rule**
  - Added prevention program, emergency response and information availability provisions
- **December 2019 RMP Reconsideration Rule**
  - Rescinded prevention program and information availability provisions
  - Kept emergency response provisions with modifications
- **RMP Safer Communities by Chemical Accident Prevention Rule**
  - January 2021 – Executive Order 13990
  - June/July 2021 – Public Listening Sessions
  - August 2022 – Proposed Rule

Risk Management Program

- Safer Communities by Chemical Accident Prevention, 87 Fed. Reg. 53556 (August 31, 2022)

RMP Proposed Provisions

- 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 chemical information

- Final rule issued February 27, 2024
- Published 89 Fed. Reg. 17622 (March 11, 2024)

Risk Management Program

Safer technologies and alternative risk management analysis (STAA) (Program 3)

- Inherently safer technology or design - means "risk management measures that minimize the use of regulated substances, substitute less hazardous substances, moderate the use of regulated substances, or simplify covered processes in order to make accidental releases less likely, or the impacts of such releases less severe."
- NAICS 324 (petroleum and coal products manufacturing processes) and NAICS 325 (chemical manufacturing)
    - Consider inherently safer technology or design, active measures, passive measures, and procedural measures
- NAICS 324/325 located within 1 mile of another 324/325 facility; NAICS 324 facility using hydrofluoric acid in an alkylation unit, and NAICS 324/325 with one accident meeting history reporting requirements
    - Consider inherently safer technology or design, active measures, passive measures, and procedural measures
    - Determine practicability of inherently safer technology or design, document how that was determined, and submit a description of technology to EPA
    - Must implement combination of the measures

Risk Management Program

- Audits
  - Compliance audit due every three years
  - Next requited compliance audit must be a third-party audit when …
    - An accidental release meeting the history reporting requirements has occurred
    - When an implementing agency requires it due to circumstances that could lead to an accidental release
- Root cause analysis incident investigations after an RMP-reportable accident
- Availability of information to the public (40 CFR 68.210)
  - Provide info “upon request of any member of the public” within 45 days of request
  - To anyone “residing, working, or spending significant time” within six miles of the fenceline
  - Includes names of regulated substances, SDSs, ER program, exercise, and “declined recommendations and justifications”
- Storage incident to transportation
  - 48 hours after disconnect from motive power that delivered it before adding to threshold determination - NOT ADOPTED

Policies - Petitions for Objection Under Title V

- EPA may object to a proposed Title V permit
  - EPA has 45 days from receipt of proposed permit, 40 CFR 70.8(c)
  - Any person may petition EPA within 60 days of expiration of EPA's 45 days, 40 CFR 70.8(d)

    EPA must object "if petitioner demonstrates … that the permit is not in compliance with the requirements" of CAA , 42 USCA 7661d(b)(2)
  - Used by NGOs/EPA to 'override' state decisions and review prior preconstruction permit decisions

- *PacifiCorp Energy* Decision, Oct. 16, 2017 - EPA will limit its review to whether the Title V permit:
  - Has accurately incorporated "applicable requirements" and "includes adequate monitoring, recordkeeping, and reporting requirements to assure compliance with the terms and conditions of the preconstruction permit
  - Will not review prior PSD Program decisions that are incorporated into a Title V permit (i.e., will not "second-guess")

- *Environmental Integrity Project v EPA*, 969 F3d 529 (5th Cir. 2020)
  - EPA's view that Title V permitting process is not the vehicle for re-examining the substantive validity of prior PSD decisions is entitled to deference

- Clarifying the Scope of "Applicable Requirements" Under State Operating Permit Programs and the Federal Operating Permit Program, 89 Fed. Reg. 1150 (Jan. 9, 2024)
  - Proposed rule
  - Codifies the *PacifiCorp Energy* approach
  - Comment period extended to April 10, 2024 (89 Fed. Reg. 14015 (Feb. 26, 2024))

Policies - Once In, Always In

- May 1995 Seitz Memorandum

-Facilities that are major sources on first compliance date of MACT standard must comply permanently with standard

- Wehrum Memorandum, dated January 25, 2018

-Supersedes the May 1995 Seitz Memorandum, which is withdrawn "effective immediately"
-Major source can become an area source when it takes …
    -An enforceable limit on its PTE HAP, and
    -Measures to bring HAP emissions below the applicable threshold, no matter when measures are taken

- Reclassification Rule, 85 Fed Reg 73854 (November 19, 2020)

-Amended 40 CFR 63.1 and added 63.1(c)(6) to codify the Wehrum Memorandum
-A major source may become an area source at any time upon reducing its emissions of and potential to emit hazardous air pollutants to below the major source thresholds
    -Subject to major source requirements until reclassification becomes effective
    -Subject to all applicable area source requirements, including notification requirements
    -Reclassification does not absolve source of violations committed during major source status

- Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

-MM2A = Major MACT to Area
-Proposed Rule, 88 Fed. Reg. 66336 (Sep. 27, 2023)
    -Reclassifications after effective date will be effective upon the date of electronic submittal of the notification
    -Imposing "'safeguards" (additional criteria) that a PTE limit must meet before it can serve as the basis for reclassification
    -Require a determination that a source will not emit beyond what would have been allowed had the source maintained major source status
    -Federal enforceability of permit limits that are taken by sources to reclassify

Climate

Presidential Documents

Executive Order 14008 of January 27, 2021

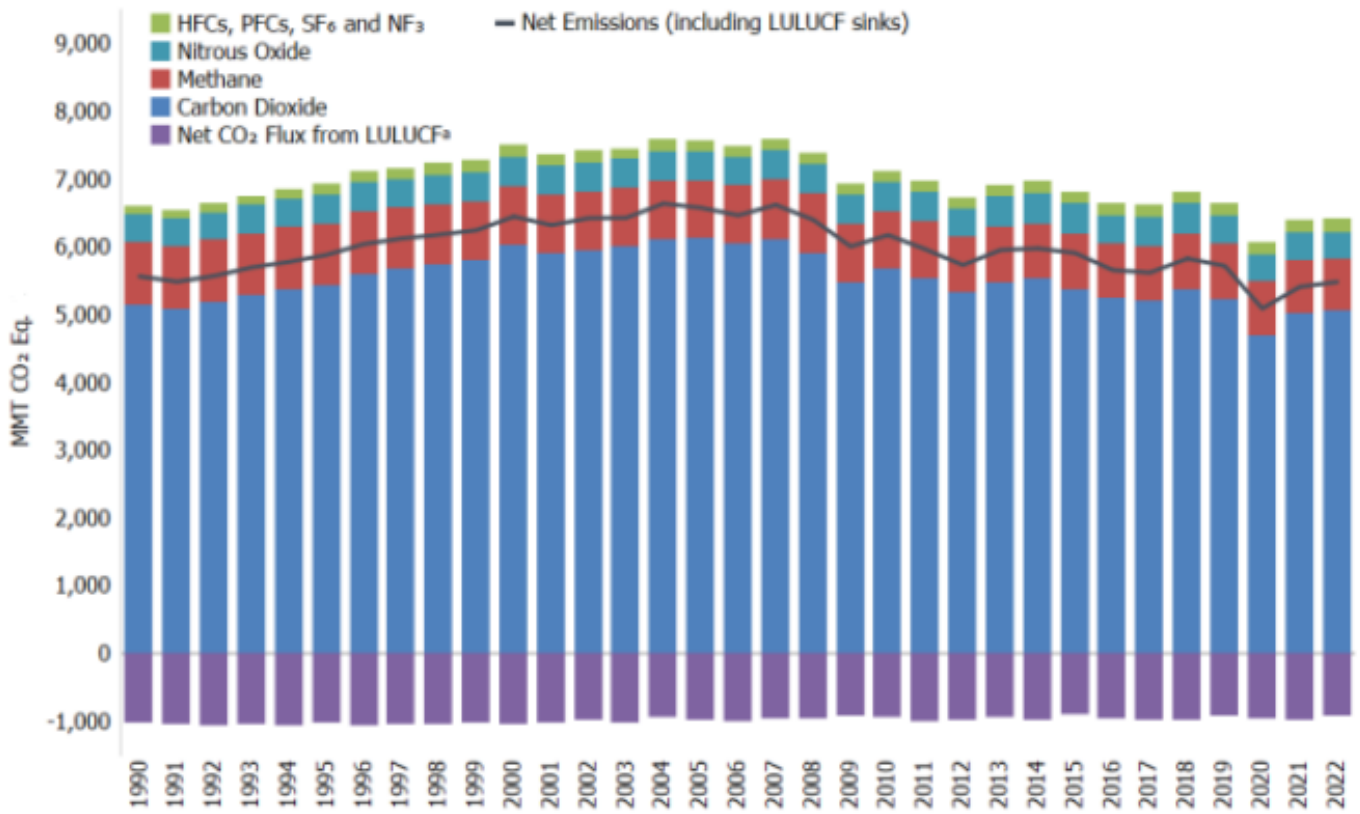
Tackling the Climate Crisis at Home and Abroad

- A “whole-of-government” approach
- Paused new oil and gas leased on public lands / offshore waters
- Announced climate goals:
  - Reducing greenhouse gas pollution from 2005 levels by 50-52% in 2030 as part of the U.S. Nationally Determined Contribution (NDC) under Paris Agreement
  - Creating a carbon pollution-free power sector by 2035
  - Reaching net-zero emissions economy-wide by no later than 2050

Climate

Trends

Figure ES-1: U.S. Greenhouse Gas Emissions and Sinks by Gas



Source: EPA GHG Emissions and Sinks, 1990 – 2022 (Draft)

Climate

Trends

Table ES-2: Recent Trends in U.S. Greenhouse Gas Emissions and Sinks (MMT CO_2 Eq.)

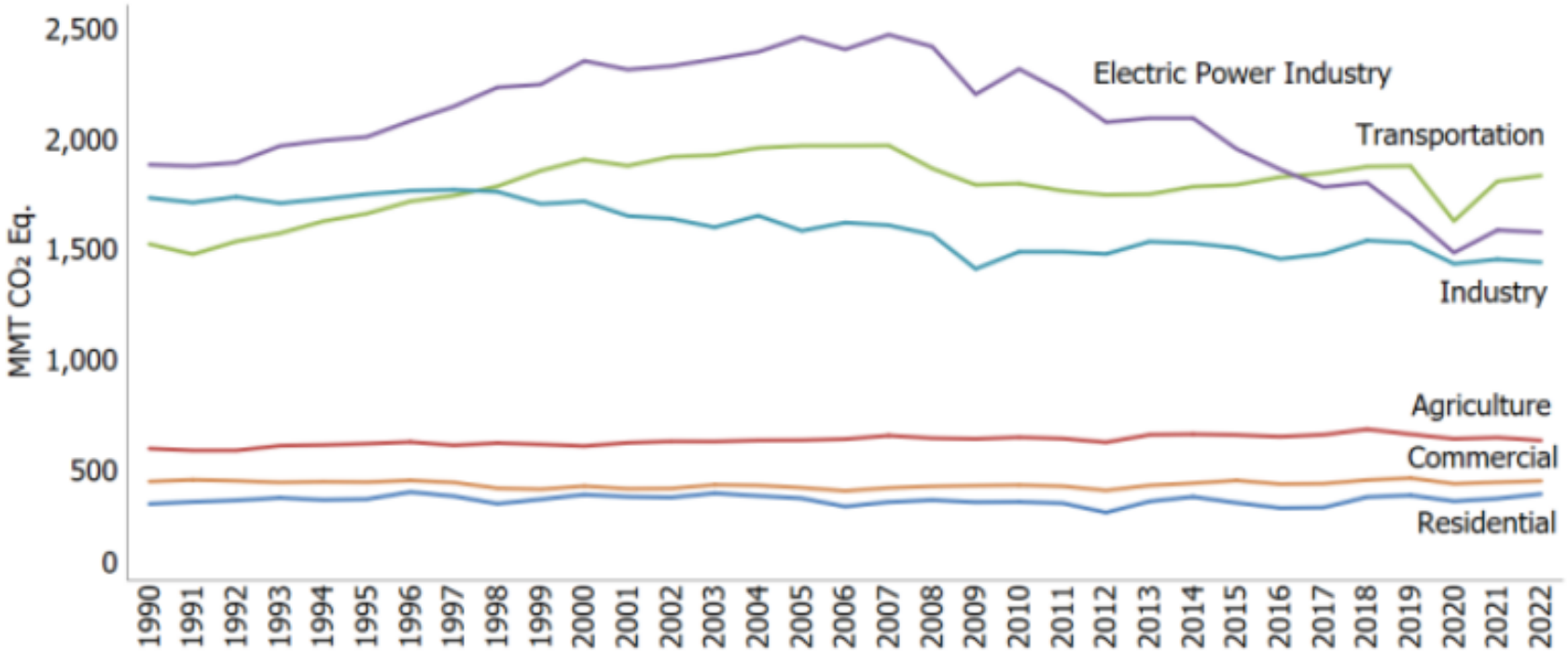
Gas/Source	1990	2005	2018	2019	2020	2021	2022	Percent Change Since 1990
CO_2	5,132.3	6,123.8	5,360.3	5,232.3	4,686.7	5,014.8	5,056.7	-1.5%
CH_4 (excludes LULUCF sources)[a]	871.6	795.4	771.5	754.3	735.3	720.6	702.5	-19.4%
N_2O (excludes LULUCF sources)[a]	408.1	419.2	439.4	416.4	391.1	398.1	386.5	-5.3%
HFCs	48.2	121.2	162.9	167.3	169.6	176.3	181.4	276.3%
PFCs	47.1	7.8	5.8	5.9	5.5	5.4	5.4	-88.5%
SF_6	35.9	20.0	7.7	8.4	8.1	8.5	7.6	-78.9%
NF_3	0.7	0.8	0.7	1.1	1.3	1.2	1.1	53.6%
Total Gross Emissions (Sources)[a]	**6,544.0**	**7,488.2**	**6,748.2**	**6,585.6**	**5,997.6**	**6,324.9**	**6,341.2**	**-3.1%**
LULUCF Emissions[b]	57.9	68.9	62.8	58.0	68.4	72.9	67.5	16.5%
CH_4	53.1	58.6	55.6	52.5	59.3	62.2	58.4	9.9%
N_2O	4.8	10.4	7.2	5.5	9.1	10.8	9.1	89.3%
LULUCF Carbon Stock Change[c]	(1,034.7)	(976.6)	(978.3)	(921.6)	(972.8)	(983.4)	(921.8)	-10.9%
LULUCF Sector Net Total[d]	(976.7)	(907.6)	(915.5)	(863.6)	(904.4)	(910.5)	(854.3)	-12.5%
Net Emissions (Sources and Sinks)	**5,567.3**	**6,580.5**	**5,832.7**	**5,722.0**	**5,093.2**	**5,414.4**	**5,487.0**	**-1.4%**

Source: EPA GHG Emissions and Sinks, 1990 – 2022 (Draft)

Climate

Trends

Figure ES-14: U.S. Greenhouse Gas Emissions Allocated to Economic Sectors



Source: EPA GHG Emissions and Sinks, 1990 – 2022 (Draft)

Climate

JANUARY 26, 2024

FACT SHEET: Biden-Harris Administration Announces Temporary Pause on Pending Approvals of Liquefied Natural Gas Exports

- "Climate change is the existential threat of our time – and we must act with the urgency it demands"
- Pause on pending decisions on exports of LNG to non-FTA (free trade agreement) countries until DOE can update the underlying analyses for authorizations
- Current economic and environmental analyses DOE uses to underpin its LNG export authorizations are roughly five years old
- No longer adequately account for considerations like potential energy cost increases for American consumers and manufacturers beyond current authorizations or the latest assessment of the impact of greenhouse gas emissions

Climate

EPA

Report on the Social Cost of Greenhouse Gases:

Estimates Incorporating Recent Scientific Advances

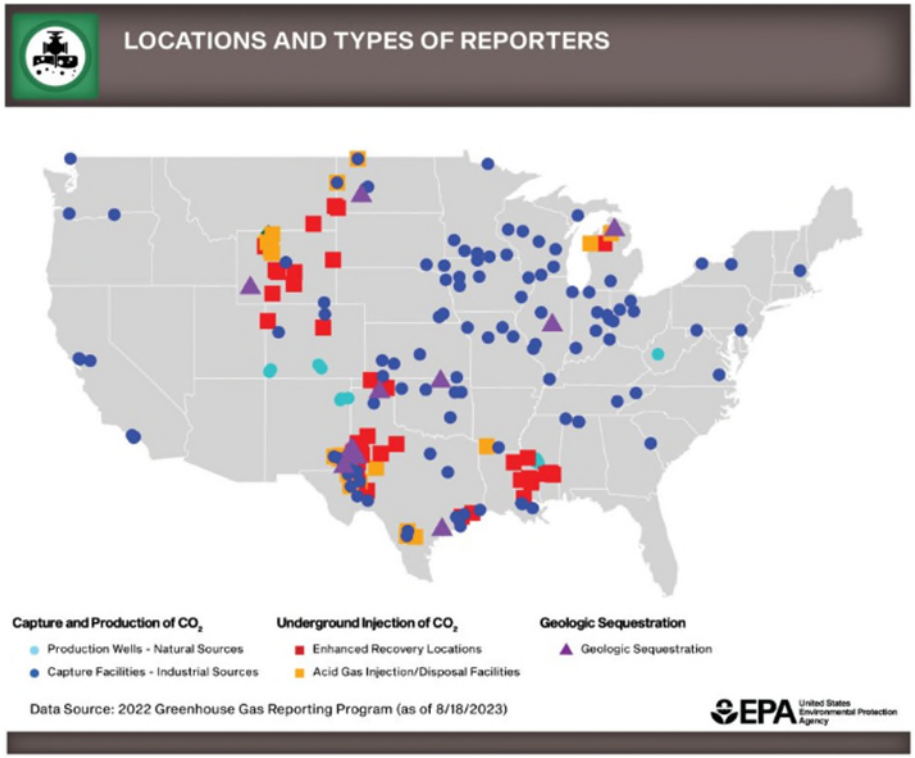
November 2023

The SC-GHG allows analysts to incorporate the net social benefits of reducing emissions of GHG, or the net social costs of increasing GHG emissions, in benefit-cost analysis.

Table ES.1: Estimates of the Social Cost of Greenhouse Gases (SC-GHG), 2020-2080 (2020 dollars)

	SC-GHG and Near-term Ramsey Discount Rate								
	SC-CO_2 (2020 dollars per metric ton of CO_2)			SC-CH_4 (2020 dollars per metric ton of CH_4)			SC-N_2O (2020 dollars per metric ton of N_2O)		
Emission	Near-term rate			Near-term rate			Near-term rate		
Year	2.5%	2.0%	1.5%	2.5%	2.0%	1.5%	2.5%	2.0%	1.5%
2020	120	190	340	1,300	1,600	2,300	35,000	54,000	87,000
2030	140	230	380	1,900	2,400	3,200	45,000	66,000	100,000
2040	170	270	430	2,700	3,300	4,200	55,000	79,000	120,000
2050	200	310	480	3,500	4,200	5,300	66,000	93,000	140,000
2060	230	350	530	4,300	5,100	6,300	76,000	110,000	150,000
2070	260	380	570	5,000	5,900	7,200	85,000	120,000	170,000
2080	280	410	600	5,800	6,800	8,200	95,000	130,000	180,000

Climate



Carbon Capture, Use, and Sequestration
LDNR's Request for Class VI Primacy

- Application in May 2021, with final application in September 2021
- Responded to EPA's comments on December 7, 2022
- Granted – 89 Fed. Reg. 703 (Jan. 5, 2024)
- Petition for Review filed in 5th Circuit by Deep South Center for Environmental Justice, Healthy Gulf, and Alliance for Affordable Energy
  - Less stringent than federal requirements
  - Application did not meet key requirements
  - LDNER has a "bad track record" with other well programs
  - Degradation of EJ concerns if the state has control over permitting

Waters of the United States

- The Clean Water Rule, 80 Fed. Reg. 37054 (June 29, 2015)
  - Provided expansive definition of 'waters of the United States'
  - Challenged in numerous district / appellate courts
  - Led to a "patchwork" of regulation (2015 Rule = in 22 states; prior rule = 28 states)
- The Navigable Waters Protection Rule, 85 Fed. Reg. 22250 (April 21, 2020)
  - Patterned after Justice Scalia's opinion in *Rapanos*
  - WOTUS "encompass relatively permanent flowing and standing waterbodies that are traditional navigable waters in their own right or that have a specific surface water connection to traditional navigable waters, as well as wetlands that abut or are otherwise inseparably bound up with such relatively permanent waters"
- Revised Definition of "Waters of the United States," 88 Fed. Reg. 3004 (Jan. 18, 2023)
  - Return to an expansive definition
  - Founded upon the pre-2015 definition of "waters of the United States," updated to reflect consideration of Supreme Court decisions, the science, and the agencies' technical expertise

Waters of the United States

Sackett v. EPA, 598 U.S. 651 (May 25, 2023)

- Waters
  - "We conclude that the *Rapanos* plurality was correct: the CWA's use of "waters" encompasses "only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic[al] features' that are described in ordinary parlance as 'streams, oceans, rivers, and lakes.'"
  - In discussing the relatively permanent standard, the *Rapanos* court stated: "The phrase does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall." *Rapanos*, 126 S.Ct. at p. 2225
- Adjacent Wetlands
  - Agreed with *Rapanos* "formulation of when wetlands are part of 'the waters of the United States.'"
  - In sum, we hold that the CWA extends to **only** those wetlands that are as a practical matter indistinguishable from waters of the United States. This requires the party asserting jurisdiction over adjacent wetlands to establish:
    - first, that the adjacent body of water constitutes waters of the United States, (i.e., a relatively permanent body of water connected to traditional interstate navigable waters); and
    - second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins.

Waters of the United States

- Conforming Rule, 88 Fed. Reg. 61964 (Sep. 8, 2023)
  - Removed references to "significant nexus"
  - Revised definition of "adjacent"
    - Means "having a continuous surface connection"
    - Deleted references to separation by man-made barriers

Revised definition of "adjacent" →

(2) *Adjacent* means having a continuous surface connection. ~~bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are "adjacent wetlands."~~

- Did not address "indistinguishable" part
  - "In sum, we hold that the CWA extends to only those wetlands that are 'as a practical matter indistinguishable from waters of the United States.'" *Sackett*, 598 US at p. 678.

Waters of the United States

Updates for Tribes and States on "Waters of the United States"

November 15, 2023

Waters of the United States

Updates for Tribes and States on "Waters of the United States"

Pre-2015 Regulatory Regime: (a)(7) Adjacent Wetlands

Continuous Surface Connection

- Wetlands have a continuous surface connection when they physically abut or touch a jurisdictional water.
  - Abutting wetlands are those that "touch" a jurisdictional water (i.e., they are not separated by uplands, a berm, dike, or similar barrier from the OHWM of the water to which they are adjacent).
- Wetlands also have a continuous surface connection when they are connected to a jurisdictional water by a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert (per pre-2015 case law, *see United States v. Cundiff* (2009), and prior EPA practice).
- Note that *Sackett* is clear that "a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA."

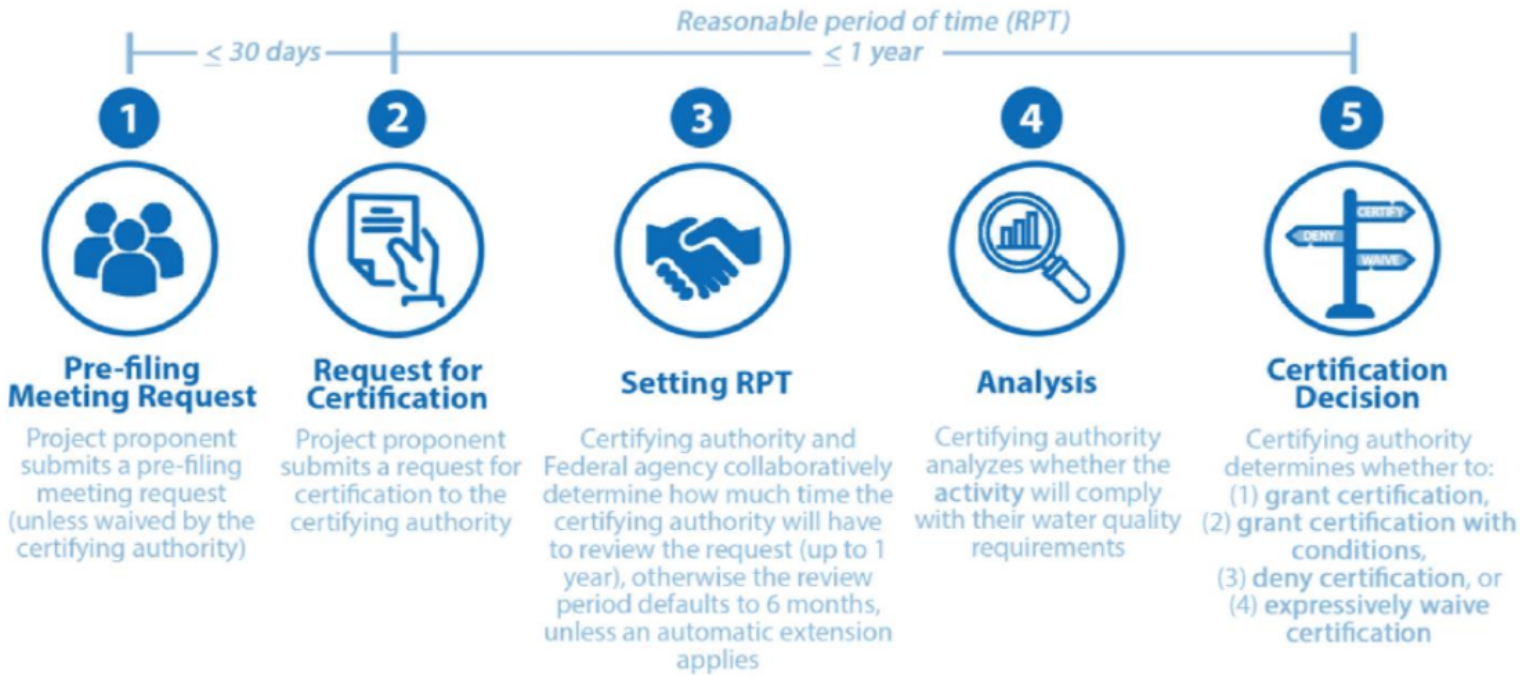
Waters of the United States

Lewis v. United States, 88 F.4th 1073 (5th Cir. 2023)

- Adjacent wetlands on property ➡ Ditches / intermittent, unnamed tributary ➡ RPW ➡ TNW
- "There is no 'continuous surface connection' between any plausible wetlands on the Lewis tracts and a 'relatively permanent body of water connected to traditional interstate navigable waters.' Recall that the nearest relatively permanent body of water is removed miles away from the Lewis property by roadside ditches, a culvert, and a non-relatively permanent tributary. In sum, it is not difficult to determine where the 'water' ends and any 'wetlands' on Lewis's property begin—there is simply no connection whatsoever. There is no factual basis as a matter of law for federal Clean Water Act regulation of these tracts."
- Several important points:
  - Corps admitted under these facts that there was no jurisdiction under the Scalia test in *Rapanos* (the very same test adopted in *Sackett*).
  - No continuous surface connection even when water may flow through ditches, a culvert, and a non-relatively permanent tributary.
  - *Sackett* holding relating to a determination of where waters ends and wetlands begins was specifically incorporated into the decision

Clean Water Act Section 401 Water Quality Certification Improvement Rule

Figure 1:
Key components of EPA's final CWA Section 401 Water Quality Certification Improvement Rule



Environmental Justice

RISE St. James, et al v. LDEQ
2023-0578 (La. App. 1 Cir. 1/19/24), --- So.3d ---, 2024 WL 207859

- "We find the directives from the Louisiana Supreme Court in *Save Ourselves*, … which require consideration of 'economic, "social[,] and other factors,' broad enough to include an analysis of environmental justice, as defined by the EPA."

- LDEQ "specifically addressed and conducted an analysis of the environmental justice/civil rights Title VI issues."

- "Based on our review of DEQ's Basis for Decision, Supplement to the Basis for Decision, Public Comments Response Summary, and the administrative record, we cannot say that DEQ's decision was in violation of its public trust duty or that its environmental justice analysis was arbitrary and capricious or otherwise without reason."
    - DEQ's determination that there were no "adverse impacts" made it unnecessary to reach the issue of "disparate impact."

Environmental Justice

EPA Complaint Nos. 01R-22-R6 and 04R-22-R6

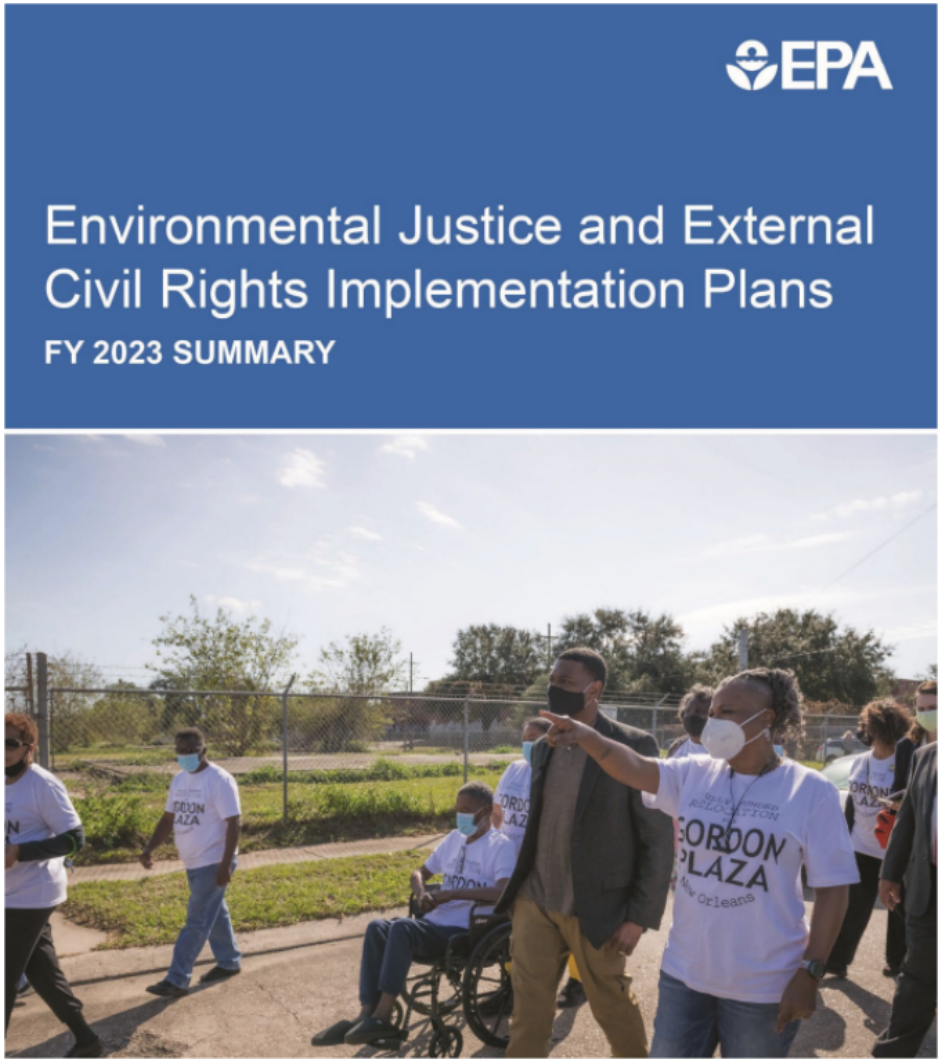
- Complaint against LDEQ by Concerned Citizens of St. John / Sierra Club
  - Accepted by EPA for investigation
- EPA issued Letter of Concern on October 12, 2022
  - Contrary to written complaint investigation procedures
  - EPA attempted to obtain comprehensive agreement with LDEQ
- *Louisiana v. EPA*, 23-00692 (US District Court, Western District), filed May 24, 2023
  - Sought ruling that EPA regulation did not allow enforcement of disparate impact
- EPA "closed its investigation" of the complaint on June 27, 2023
  - Claimed other means to address issues
- Preliminary Injunction, Jan. 23, 2024
  - Imposing or enforcing any disparate impact-based requirements against the State of Louisiana or any State agency under Title VI
  - Notice of Compliance: EPA has "ceased any and all imposition or enforcement of their Title VI disparate-impact requirements and cumulative-impact-analysis requirements under Title VI."

Environmental Justice

Inclusive Louisiana, et al v. St. James Parish, et al
US District Court, Eastern District, filed March 21, 2023

- Complaint filed regarding St. James Parish Land Use Plan
  - Over 150 pages and 610 paragraphs
  - Allegations going back to 1685 (Par. 474)
  - Claims:
    - I - 13th Amendment: Badge and incident of slavery
    - II, III - 14th Amendment: Equal protection, substantive due process (bodily integrity)
    - IV - Section 1982: Property rights
    - V, VI - Religious Land Use and Institutionalized Person Act (substantial burden and discrimination)
    - VII - La. Constitution: Cultural origins
- Judgment, Nov. 21, 2023 – dismissal of all claims with prejudice
  - Claims V and VII – lack of standing
    - V: Religious Land Use and Institutionalized Person Act (substantial burden)
    - VII: La. Constitution: Cultural origins
  - All others – prescribed
- Appealed to Fifth Circuit
  - Brief due March 21, 2024

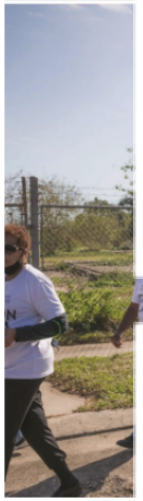
Environmental Justice



Environmental Justice

Envir
Civil
FY 2023

- EPA's Region 6 will ensure communities with environmental justice concerns benefit from a host of new grant, funding, and technical assistance opportunities by broadcasting opportunities with partners in all Region 6 states and tribal organizations, including BIL, ARPA, and Inflation Reduction Act (IRA). Consistent with these objectives, OLEM will present training at the Brownfields 2023 Conference for communities to better access EPA assistance. Region 6 will implement the tribal water infrastructure appropriations in the BIL as well as the annual congressional appropriations to the State Revolving Fund tribal set asides. EPA will provide water and wastewater infrastructure finance support and improve capacity development for tribal drinking water and wastewater infrastructure programs.



- EPA's Region 6 will support DOJ in their Comprehensive Environmental Justice Enforcement Strategy that (1) prioritizes judicial cases that will reduce public health and environmental harms to overburdened and underserved communities; (2) make strategic use of all available tools to address environmental justice concerns; (3) meaningfully engage with impacted communities; and (4) be transparent about environmental justice efforts, as well as the results of those efforts.

- EPA's Region 6 will provide technical assistance support to OEJECR on Title VI complaints in Texas, Louisiana, and New Mexico, that involve, for example, answering permit and/or regulatory questions, providing input on Informal Resolution Agreement terms and conditions, and evaluating counterproposals from state and local air authorities.

Compliance and Enforcement

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

August 17, 2023

MEMORANDUM

SUBJECT: FY 2024 – 2027 National Enforcement and Compliance Initiatives

FROM: David M. Uhlmann

TO: Regional Administrators
Enforcement and Compliance Assurance Division Directors and Deputies
Superfund and Emergency Management Division Directors and Deputies
Regional Counsel and Deputies

Compliance and Enforcement

- Mitigating Climate Change (new)
  - Address (1) methane emissions from oil and gas facilities; (2) methane emissions from landfills; and (3) the use, importation, and production of hydrofluorocarbons (HFCs)
- Addressing Exposure to PFAS (new)
  - Achieve site characterization, control ongoing releases that pose a threat to human health and the environment, ensure compliance with permits, and address endangerment issues as they arise
- Protecting Communities from Coal Ash Contamination (new)
  - Conducting investigations, taking enforcement action , and protecting and cleaning up contaminated groundwater, surface water, and drinking water resources
- Reducing Air Toxics in Overburdened Communities (modified)
  - Target, investigate, and address noncompliance with HAP regulations with a focus on sources of HAPs in communities already highly burdened with pollution impacts
- Increasing Compliance with Drinking Water Standards (continued)
  - Ramp up field presence, pursue strategic enforcement to reduce noncompliance, and offer more compliance assistance to prevent and address public health risks
- Chemical Accident Risk Reduction (continued)
  - Focus on inspecting and addressing noncompliance at facilities using two extremely hazardous substances that pose high risk to communities: anhydrous ammonia and hydrogen fluoride

Questions and Comments?

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2022 Federal Regulatory Update
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