

Air & Climate Report: August 2022

CONTACTS

Brooks M. Smith | Gregory S. Narsh | Byron Kirkpatrick | Jerrold Samford | William M. Droze | Mack McGuffey | Melissa Horne | M. Buck Dixon | Andrea W. Wortzel | Shawn J. O'Brien | Chris E. Bergin | Emily Guillaume | Misha Tseytlin | Morgan Gerard

In the world of air quality and climate change, summer 2022 began with a bang, as the Supreme Court finally spoke on the merits of EPA's efforts to regulate carbon dioxide emissions from power plants under Section 111 of the Clean Air Act. Although the decision didn't answer every question regarding EPA's authority to address climate change under that section, or the Act as a whole, *West Virginia v. EPA* was undeniably the most consequential air-related Supreme Court decision since the Court told EPA in 2015 to consider cost in regulating hazardous pollutants from utilities. Check out our coverage of the *West Virginia* decision below. A little more under the radar, EPA also finalized revisions to the Boiler MACT, a rule long plagued with difficult legal issues. In the rule, EPA raised a couple of issues likely to cause additional controversy. Our discussion of the final Boiler MACT rule is below as well.

Looking ahead, EPA appears to have its work cut out for it on other critical Clean Air Act programs and policies. August 15 is EPA's self-imposed deadline both for states to submit their next round of regional haze plans and for EPA to begin the process of developing a federal plan for states that fail to file by that date. Quite a few states are still scrambling to finish their plans, but many are likely to miss the deadline nonetheless. Given that deadline suits have already been filed to force EPA to move more quickly on regional haze, we expect to see EPA begin to take some important actions soon.

EPA is also under a court-ordered set of deadlines to act on state submittals in response to its 2015 "SSM SIP call," EPA's request for states to revise their state implementation plans to remove legal protections for excess emissions during startups, shutdowns, and malfunctions (SSM). While EPA has already approved or proposed to approve state rules that delete the legal protection for those unavoidable events, EPA has yet to decide how to handle states that followed EPA's advice by replacing exemptions and affirmative defenses with work practice standards. Meanwhile, the D.C. Circuit is poised to issue a critical decision on the legality of the SSM SIP call, which could affect how EPA decides to proceed on the remaining states.

As fall approaches, stay tuned to the Troutman Pepper [Environmental Law and Policy Monitor](#) for insight into the most important air and climate developments as they occur.

[View the Air & Climate Report online here.](#)

RELATED INDUSTRIES + PRACTICES

- [Air Quality + Climate Change](#)

- Environmental + Natural Resources