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EPA's Big Plans for 2023: Top Air Rulemakings We Are Watching

BY: LIZ WILLIAMSON

An environmental lawyer walks into a cocktail party. An often-asked question is: What is happening at EPA in your world? What should we be watching that could impact business as usual? Any surprises this year? This article will make you cocktail party ready. Buckle up as we navigate through the top potentially impactful rules and sleepers we are tracking in the air world this year.

In early January, EPA projected an aggressive rulemaking agenda for 2023. EPA plans to promulgate a substantial number of Clean Air Act rules as part of its plans. Our watch-list is as follows:

- > Reconsideration of the Particulate Matter ("PM") National Ambient Air Quality Standard ("NAAQS") (2023: Proposed / Final Rules expected): EPA recently released the proposed rule. EPA proposes to lower the existing PM 2.5 NAAQS Annual Standard from 12.0 ug/m³ (current) to either 9.0 ug/m³ or 10.0 ug/m³. EPA does not plan to modify the 24-hour primary or secondary PM 2.5 standard. EPA has

printed maps of at-risk areas that may become nonattainment for the new standard. EPA also released a list of current ambient concentrations based on monitoring data. A lower PM 2.5 annual standard will impact all industry sectors. The comment period for the proposed rule ended on March 28, 2023. EPA projects the final rule to be released in August of this year.

Potential impacts: A lower PM NAAQS standard will impact economic development. A lower PM NAAQS will make it harder to "pass" ambient modeling, which is essential to pursue a project permit. Most new manufacturing facilities must undertake ambient modelling to obtain an air permit. Major facility expansions and projects will also require modeling if they trigger Prevention of Significant Deterioration ("PSD") significance thresholds. New power generation assets will be more difficult to build and site, especially in urban areas that may have a larger power demand. Grid reliability may be impacted as fossil fuel-fired units retire; yet new generation is more difficult and time-consuming to build.

- > Good Neighbor Federal Implementation Plan ("FIP") (2023: Final Rule released on March 15, 2023): The Final Rule addresses states' compliance with the 2015 Ozone NAAQS of

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