Message

From: E&E News [ealerts@eenews.net]
Sent: 3/5/2021 12:26:59 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 5 -- E&E Daily is ready

E&E Daily -- Congress. Legislation. Politics.

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AN E&E NEWS PUBLICATION

E&E DAILY — Fri., March 5, 2021

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1. NEWSMAKER:
'Isn't it crazy?': The congressman tackling toxic baby food

A House report detailing the high heavy metal contents of popular baby food brands shocked parents last month, leaving them feeling duped by the very companies they depend on to feed their kids.

TOP STORIES

2. POLITICS:
GOP taps cap-and-trade playbook to slow COVID-19 bill

3. APPROPRIATIONS:
Lawmakers eye earmarks to address Miss. water crisis

4. INTERIOR:
Are Senate Republicans opposing Deb Haaland — or Biden?

ADMINISTRATION

5. INFRASTRUCTURE:
Biden eyes quick bill movement after bipartisan huddle

TRANSITION

6. DOE:
Deputy secretary pick vows action on grid, minerals

7. NOMINATIONS:
Senators question OMB picks on permitting, spending

8. DEFENSE:
Top Pentagon nominee commits to climate strategy

ON THE HILL

9. ENERGY POLICY:
Committee sets first hearing on Texas blackouts

10. HOUSE:
Panel weighs aiding islands taking 'brunt' of climate change

11. CHEMICALS:
Republicans question EPA over assessment overhaul

IN COMMITTEE

12. CLIMATE:
Feinstein, Casten introduce financial risk bill

13. AGENDA:
Lawmakers file trove of energy, water, resources bills

UPCOMING HEARINGS AND MARKUPS

14. CALENDAR:
Activity for March 1 - March 7, 2021

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Subject: March 2 -- E&E Daily is ready

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E&E DAILY — Tue., March 2, 2021

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1. ENERGY POLICY:
Republicans skeptical of hearings on Texas blackouts

Republicans are questioning how aggressively, and even if, Congress should investigate Texas energy problems that left millions of people without power last month following severe weather.

TOP STORIES

2. INTERIOR:
Committee sets decisive vote on Haaland

3. CLIMATE:
API weighs support for carbon pricing

4. ENERGY POLICY:
Tax credit could be key to Dem unity on climate

ON THE HILL

5. NOMINATIONS:
Raimondo clears hurdle, gets strong bipartisan backing

6. SENATE:
Murkowski remains undecided after Tanden meeting

7. CLIMATE:
Stabenow promotes carbon markets plan at farm convention

8. APPROPRIATIONS:
Republicans want emergency aid for natural gas spikes

IN COMMITTEE

9. ENDANGERED SPECIES:
Cheney bill would remove grizzly bear protections

10. ENERGY POLICY:
Bills would boost feds' use of clean cars, renewables

11. SENATE:
Energy and Natural Resources unveils panel leaders

POLITICS

12. CAMPAIGN 2022:
House Dems will focus on protecting 32 incumbents

UPCOMING HEARINGS AND MARKUPS

13. CALENDAR:
Activity for March 1 - March 7, 2021

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Sent: 2/22/2021 10:06:47 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FERC to probe Texas energy market for manipulation

FERC to probe Texas energy market for manipulation

By Eric Wolff

02/22/2021 05:05 PM EST

FERC said on Monday it would investigate maket activity during the sharp spike in natural gas and electricity prices during last week's power failure to determine whether market participants engaged in manipulation.

The commission also opened a new docket on how climate change threatens electric reliability.

The details: Power prices spiked to $9,000 a megawatt hour in Texas during a 5-day energy crisis that affected at least 4.4 million Texans. Roughly 30 gigawatts of thermal generation tripped offline early Feb. 15, leading to the high prices.

FERC's jurisdiction in Texas is limited, but it has the expertise to analyze market data at gas and electric hubs, and it plans to collaborate with other federal partners as necessary.

Monday's new docket on climate change and grid reliability appears to be national in scope.

"“The effects of climate change are already apparent,” FERC Chair Rich Glick said in a statement, “And we must do everything we can within our statutory authority to ensure that the electric grid is capable of keeping the lights on in the face of extreme weather.”

Glick last week closed a docket focused on electric resiliency, saying the commission would need to take a region-by-region approach.

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https://subscriber.politicopro.com/energy/whiteboard/2021/02/ferc-to-probe-texas-energy-market-for-manipulation-3987162

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To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 18 -- Energywire is ready

Energywire -- The Transformation of the Energy Sector

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ENERGYWIRE

AN E&E NEWS PUBLICATION

ENERGYWIRE — Thu., March 18, 2021

READ FULL EDITION

1. ENERGY TRANSITIONS:

How coal failed in the Texas deep freeze

Industry has claimed that coal is more reliable than natural gas and renewable energy during extreme weather events because it's stored on-site. But the disaster in Texas shows that is not always true.

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TOP STORIES

2. PIPELINES:

21 states sue Biden for revoking Keystone XL permit

3. DOE:

Granholm: U.S. should 'replicate' Germany's 50% renewables

4. PIPELINES:

'Lipstick on a pig.' Landowners skewer FERC

LAW

5. REGULATIONS:

Biden asks court for redo on Trump NEPA rule

6. ENERGY POLICY:

12 states, cities sue over Trump DOE furnace rule

FEDERAL AGENCIES

7. UTILITIES:

FERC urged to review dues paid to 'problematic' energy groups

ENERGY TRANSITIONS

8. ELECTRICITY:

Groups urge probe of subsidy for 2 Midwest coal plants

ELECTRICITY

9. ELECTRIC VEHICLES:

EV maker Lordstown falls on SEC look at short-seller claims

10. FLORIDA:

Lobbyist named in $60M Ohio bribery probe is found dead

11. BUSINESS:

German automaker BMW ramps up electric offerings

OIL AND GAS

12. BUSINESS:

Shell: Pa. ethane plant completion expected in 2022

A message from POLITICO:

GO BEHIND THE FIRST 100 DAYS: Joe Biden entered the White House with an expansive agenda, including rethinking energy and climate policy. Keep up to date on his agenda with POLITICO's First 100 Days to track the 46th president's efforts to reshape policy and politics. Follow along as we chronicle the regulation and legislation used to enact an agenda. **Check out the First 100 Days now.**

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ABOUT ENERGYWIRE – THE TRANSFORMATION OF THE ENERGY SECTOR

Energywire is written and produced by E&E News, which is staffed by a dedicated reporting team within the POLITICO newsroom. Energywire brings readers deep, broad and insightful coverage of the transformation of the energy sector. Energywire focuses on the business, environmental and political issues surrounding the rapidly

changing energy industry and the numerous factors -- from expanding natural gas use to renewables and more -- that are altering the traditional electric utility industry. Energywire publishes daily by 8:00 a.m.

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To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Tribes see troubled history in GOP's resistance to Haaland

Tribes see troubled history in GOP's resistance to Haaland

By Anthony Adragna, Ben Lefebvre

02/22/2021 05:01 AM EST

Three Republican senators have signaled they plan to oppose Rep. Deb Haaland's nomination to be President Joe Biden's leader of the Interior Department, complaining of what they call the New Mexico Democrat's "extreme views" on fossil fuels and use of federal lands.

But supporters of Haaland, who would be the nation's first Native American to serve in a presidential Cabinet, say they see a familiar pattern in the Republicans' rhetoric and their unusual move to voice their opposition even before her nomination hearing was scheduled. They say she's facing a level of criticism above and beyond the normal fiery Washington political rhetoric.

"Being a minority person and being a person of color, it makes you wonder if she would get this treatment if she wasn't a person of color, if she wasn't Indian and if she wasn't a woman," said Montana state Sen. Shane Morigeau, a Democrat and a member of the Salish and Kootenai tribes, in an interview. "She became an easy target because we haven't gotten to this place in our country where we give — especially women and people of color — a fair shot."

Haaland, a member of the Laguna Pueblo, has seen her star rise quickly since she was elected to Congress in 2018. She grew up in poverty and her official disclosures show she is still paying off the loans from the University of New Mexico law degree she earned in 2006. A progressive, Haaland, worked on former President Barack Obama's campaign in the state in 2012 and later chaired the state's Democratic Party, where she was credited with fixing its finances and rebuilding it after electoral losses.

Leading the opposition to her appointment are Sens. Steve Daines of Montana and John Barrasso and Cynthia Lummis of Wyoming, white lawmakers from states with sizable American Indian populations. Lummis blasted Haaland's "extreme views," while Daines and Barrasso called her "radical" — and Daines suggested he would attempt to block her nomination altogether.

The three have cited her opposition to the Keystone XL and Dakota Access oil pipelines, projects that she would have little influence over if she becomes Interior secretary. (Biden has already blocked the Keystone XL pipeline.) And they've railed against early executive action from Biden that paused new leases for oil and gas drilling on federal lands and waters, which contribute about 20 percent of U.S. production.

But multiple Native Americans told POLITICO that the senators' sharp critiques of Haaland, before she's had a chance to address their concerns, reminds them of the stereotyping and dismissiveness that tribes have long experienced in dealings with the U.S. government.

Democratic Montana Rep. Tyson Running Wolf, a member of the Blackfeet Nation, called the Republican opposition a "political ploy" familiar to Native Americans who have entered politics, where there exists a "preconceived notion from others that you're 25-30 percent dumber."

"It's wrong that they haven't given her the chance," Running Wolf said. "Let her bring some of those homegrown Native American values that she's grown up with and established from her home, and bring them and surprise people. And then let her work be evaluated."

Both Morigeau and Running Wolf signed a letter from the Montana American Indian Caucus urging Daines and Rep. Matt Rosendale (R-Mont.) to reconsider their opposition to Haaland's nomination.

Several tribal members said young people in their communities regard Haaland and fellow Rep. Sharice Davids (D-Kan.), who made history in 2018 as the first Native American women elected to Congress, as heroes who helped give Indigenous groups a seat at the table in governmental decisions.

And they said the reflexive GOP opposition is impossible to separate from the federal government's actions over many generations that marginalized and isolated tribal communities.

Joye Braun, a member of the Cheyenne River Sioux Tribe in South Dakota who attended demonstrations against the Keystone XL pipeline, said she thought Daines, Barrasso and Lummis were mainly opposing Haaland in an attempt to defend the oil, gas and coal industries in their states. But she also said she felt an uglier sentiment underlying their comments.

"It doesn't surprise me that they are attacking her," Braune said in an email.

In response to the criticism from tribes, Daines spokesperson Katie Schoettler said his opposition to her nomination has nothing to do with her Indigenous background and came after meeting with her one-on-one.

"Senator Daines is proud to have a strong relationship with Montana's Tribes and will continue working on issues important to Indian Country," she said in an email. "This is about the Congresswoman's radical views that are completely out of touch with Montana and the nation. The Congresswoman is ranked one of the top ten most liberal members of Congress. Her job-killing, anti-energy views threaten Montana jobs, public access to public lands, outdoor recreation and our energy independence."

An aide for Lummis said: "Senator Lummis opposes Rep. Haaland for one reason and one reason only: her radical statements and positions on lands and energy issues," while Barrasso's office did not respond to request for comment.

Another Republican on the Energy and Natural Resources Committee, Sen. John Hoeven of North Dakota, indicated in a statement that Haaland would have a tough time winning his support as well. Other GOP lawmakers on the committee declined to comment on Haaland's nomination.

"We are concerned with Rep. Haaland's record on energy development," Hoeven said. "That includes opposition to important energy infrastructure like pipelines, as well as her support for policies like the Green New Deal, which raises prices for consumers while increasing our reliance on foreign energy sources. We plan to raise these concerns with her during her confirmation hearing, and ultimately we need her strong commitment to ensuring that taxpayers are able to benefit from our abundant energy reserves on our federal lands."

After a weekslong delay in scheduling Haaland's hearing, the committee set a Feb. 23 date to consider her selection. Hundreds of groups, including tribal representatives and environmental justice advocates, have urged Senate leaders for a "rapid confirmation" of Haaland in a letter.

Not all Republicans have opposed Haaland's nomination. Rep. Don Young of Alaska and Tom Cole of Oklahoma, a state with a significant Indigenous population, voiced support for her in comments for a November POLITICO Magazine article.

But senators, not House members, have the power to slow her nomination. And Native American groups have said the vehemence of the senator's complaints against Halaand, a current House member and daughter of a Marine veteran, rings in their ears as the type of prejudice they've experienced for decades in American politics.

Other critics said the Senate Republicans are making Haaland a scapegoat in a proxy fight against Biden's early executive orders revoking a necessary permit for the proposed Keystone XL pipeline and giving priority to clean energy projects. Haaland, the prior vice chair of the House Natural Resources Committee, had backed bills that would have used federal land to expand electric transmissions networks that could connect wind and solar farms to broader markets.

Barrasso, Daines and Lummis received a combined $1.8 million in campaign contributions from the fossil fuel industry in the last election cycle, according to the Center for Responsive Politics, which tracks campaign financing.

Seeing a nominee to lead Interior who has a background different from previous heads of the agency and opposes the oil and gas industry's priorities may be triggering the Republicans' angst, said Julia Bernal, director of Pueblo Action Alliance and a member of the Sandia Pueblo in New Mexico. There have been Hispanic men and white women that served as secretaries, but Haaland is a groundbreaking pick as a Native American woman.

Haaland "is going to shift a worldview on how we'll be managing water, land and natural resources in the future," Bernal said. "Change is disconcerting to some folks. It's a paradigm shift. The way we've been misusing resources and mismanaging land has resulted in a climate crisis. Seeing a change in who holds that power, if that threatens the interests of oil and gas, that definitely reveals what's wrong with things."

Haaland's supporters say the senators' focus on her past backing for renewable energy and criticisms of oil and gas projects ignores what her leadership of Interior would mean for a country that for much of its history made killing and exiling Native Americans official government policy.

"The senators are probably listening too much to their benefactors and they're probably afraid of Deb Haaland," House Natural Resources Chair Raúl Grijalva (D-Ariz.) told POLITICO. "Interior in many ways was set up to take care of the Indian problem — either through taking of land, through almost elimination of people themselves, culture, or forced assimilation. [It's] come full circle and you're going to have an Indigenous person run the department. I think as a country we should see that moment as some redeeming moment."

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CLIMATEWIRE — Tue., March 2, 2021

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1. POLITICS:
Romney, Gina McCarthy once teamed on CO2. Will they again?

Mitt Romney relied on Gina McCarthy to guide his climate program when he was governor of Massachusetts. A similar partnership now could propel climate legislation.

TOP STORIES

2. COURTS:
Biden DOJ echoes Trump on kids' climate case

3. FINANCE:
Citi goes net zero. Who's next?

4. EMISSIONS:
Gasoline delivery is a thing. Is that good or bad for CO2?

BUSINESS

5. EMISSIONS:
API mulling support for carbon pricing

6. ENERGY TRANSITIONS:
U.S.-China climate reboot at CERAWeek takes center stage

CLIMATE IMPACTS

7. EXTREME WEATHER:
Report hits states for failing to mandate flood disclosures

8. EXTREME WEATHER:
Heavy rains lead to rescues, road closures in Appalachia

INTERNATIONAL

9. GERMANY:

Social Democrats unveil climate-focused election program

10. AUSTRALIA:

Farming faces slowdown after bumper year for crops

11. POLAND:

Green recovery plan gives big boost to hydrogen

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Climatewire is written and produced by E&E News, which is staffed by a dedicated reporting team within the POLITICO newsroom. It provides comprehensive coverage of all aspects of climate change issues. From international agreements on carbon emissions to alternative energy technologies to state and federal GHG policies to corporate sustainability, Climatewire plugs readers into the information they need to stay abreast of this complex issue. Climatewire publishes daily by 7:00 a.m.

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To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Media Clips: Afternoon Edition

Daily Media Clips: Afternoon Edition
March 9, 2021

BioFuels

- Susan Montoya Bran, AP, Clean Fuel Proposal gets green light from New Mexico Panel
- DC Velocity, Averitt Honored with 2020 Clean diesel Award for Fuel Conservation

Chemicals

- Britt E Erickson, C&EN, The end of pentachlorophenol is near
- Niagara Frontier Publications, EPA seeks public comment on protecting human health, environment from PBT chemicals
- Allison Dunne, WAMC, NYS Senator's Bill Would Require DOH To Publicly Report Radiation Data
- Navajo- Hopi Observer, Living in a contaminated land: Navajo EPA's assistant director says history of uranium contamination has gone on long enough
- Caleb Jacobs, The Drive, US Government Sues Diesel Truck Turner EZ Lynk Over Emissions Defeat Devices

Climate Change

- Sean Fleming, Eco Watch, Is Climate Change Making Allergy Season Worse? These Scientists Think So

Wildlife

- Emma Johnson, Wasatch Front, Proposal: US Air Force to assist Salt Lake City in mosquito abatement

Water

- Mitka Patil, Bay Nature, City and Regional Goals Clash as Newark Pushes Ahead With Low-Density Housing in A Bayshore Flood Zone
- The Maui News, DLNR fined nearly $222K for operating cesspools
- Andy Bitalico, The Pasadena Now, Harvest water with the Rain Barrels going on offer from Pasadena water and power

Clean Fuel Proposal gets green light from New Mexico Panel

By SUSAN MONTOYA BRYAN, Associated Press ALBUQUERQUE, N.M. — A New Mexico legislative panel on Tuesday advanced a measure that would set the stage for the creation of a clean fuel standard that environmentalists and Democratic Gov. Michelle Lujan Grisham say would move the state closer to reaching its carbon reduction goals.Cars, trucks and commercial vehicles traveling throughout the expansive state amount to the second-largest source of

greenhouse gas emissions in New Mexico. State environment officials say targeting the types of fuel that are offered and creating a voluntary credit program that monetizes emission reductions would put a dent in methane and other pollutants.Bill sponsor Sen. Mimi Stewart contends that emissions could be reduced by 4.7 million metric tons over the next two decades by requiring fuel providers that refine, blend, make or import fuel to gradually reduce the carbon intensity of the fuel itself."That's like taking 44,000 cars off the road every year for 15 years," the Albuquerque Democrat said in a recent opinion piece. "A clean fuel standard would not apply to retail gas stations or cause cost increases at the pump."Republican lawmakers and other critics dispute that claim, saying such a proposal would lead to higher gas prices in the poverty-stricken state and the burden would be felt mostly by lower income residents.The state Economic Development Department has acknowledged that New Mexico could see an increase in prices of less than 5%, but the agency argues that the cost of alternative fuel vehicles is expected to decrease over time, resulting in reduced alternative fuel prices as demand increases for such vehicles.The Senate Finance Committee approved the bill Tuesday during a brief meeting that did not include any public comments.The measure still needs the approval of the full Senate and the House before lawmakers adjourn in less than two weeks. With the clock ticking, some say the bill could be fast-tracked by the Democrat-led Legislature since it's a priority of the governor.Upon taking office in 2019, Lujan Grisham issued an executive order on addressing climate change and preventing waste across the energy sector. So far, that has included efforts by the state to craft new rules for the oil and gas industry aimed at limiting venting and flaring and boosting reporting requirements.If adopted, New Mexico would join California and Oregon in offering credits generated by emissions-reducing technology. Some other states are considering similar clean fuel legislation.The governor has billed the pollution measures as ways to attract new businesses and jobs focused on environmental protection and public health. Her administration has claimed that a clean fuel standard alone could spur tens of millions of dollars in annual economic investment."As the first state in the Southwest to seek a clean fuel standard program, we are blazing a path toward significant economic investments while tackling emissions that contribute to climate change," the governor said in a statement.If the measure is enacted, fuel producers and importers would have to reduce the amount of carbon in fuels by 10% by 2030 and more than double that a decade later. If they fall short, producers can purchase credits to meet the standard.Supporters of the legislation said utilities could generate credits through sequestering greenhouse gas emissions. Other possibilities include credits from oil and gas operations and the agriculture and waste management industries.Larry Behrens with Power the Future, an advocacy group that supports New Mexico's traditional energy industry, said a statewide clean fuel standard would raise gas prices at a time when prices already are going up and families have yet to recover from the economic consequences of the pandemic.The legislation includes money for the state Environment Department to craft new rules within two years. Registration fees charged to producers and those who generate credits would go into a fund to pay for oversight and enforcement by the agency.

AVERITT HONORED WITH 2020 CLEAN DIESEL AWARD FOR FUEL CONSERVATION

https://www.dcvelocity.com/articles/49826-averitt-honored-with-2020-clean-diesel-award-for-fuel-conservation

March 9th, 2021

Averitt has been awarded the 2020 Clean Diesel Award from the Tennessee Trucking Association (TTA). Presented at the TTA 90th Annual Convention, the award recognizes the transportation and logistics service provider for its efforts in improving fuel conservation and sustainability within in its fleet.

"It is an honor to be recognized for our team's ongoing efforts to improve the sustainability of our operations, "said Averitt president and chief operating officer Wayne Spain. "We are dedicated to reducing the impact of our equipment and fuel use on the environment, and we will continue to seek out new methods and technologies that will allow us to better serve our communities and planet."

In terms of the company's commitment to fuel efficiency, Averitt has adopted a wide variety of practices and incorporated technologies into its fleet of trucks, including:

Using only ULSD (ultra-low-sulfur diesel) at the company's in-house fueling stations to reduce emissions of particulate matter and nitrogen oxides.

Operating new low-emission diesel tractor engines.

Providing drivers with access to a roadside service that enables them to reduce tractor idling when parked for long periods of time.
Maintaining balance within the company's network to reduce empty miles to reduce emissions and fuel usage.
In 2004, Averitt became a charter member of the Environmental protection Agency's SmartWay® program. By investing in the industry's most modern trucks and trailers, in conjunction with optimizing its fleet routing, Averitt has made several measurable achievements that provide a positive impact for its customers, including:
36% reduction carbon dioxide emissions
84% reduction in nitrogen oxide emissions
2.5 million gallons of diesel fuel saved
In addition to the TTA Clean Diesel Award, Averitt was recently honored by Supply Demand Chain Executive with the 2020 Green Supply Chain Award and was also named by Food Logistics as a 2020 Top Green Provider.

https://www.averittexpress.com/public/aboutUs/corpSocialResp/environmentalResponsibility.jsp

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The end of pentachlorophenol is near

US EPA proposes to ban all uses of wood preservative citing health risks to workers

by Britt E. Erickson

MARCH 9, 2021

The US Environmental Protection Agency is proposing to ban all uses of the wood preservative pentachlorophenol. The decision comes after the sole producer of the chemical in North America announced that it was shutting down its pentachlorophenol business by the end of this year.
Commonly called penta, the chemical is used primarily to treat wooden utility poles. The US National Toxicology Program lists pentachlorophenol as a "reasonably anticipated" human carcinogen. The chemical is banned under the United Nation's Stockholm Convention on Persistent Organic Pollutants, a treaty the US signed but never ratified.
The EPA claims that "pentachlorophenol poses significant human health risks to workers." To address such risks, the agency is proposing to prohibit all uses by canceling its registration under the federal pesticide law. Safer alternatives, such as copper naphthenate and dichloro-octyl-isothiazolinone, and other wood preservatives, such as chromated arsenicals and creosote, are available, the EPA says.
The decision "is by no means surprising," Lynn Bergeson, managing partner at the law firm Bergeson & Campbell, writes in a March 5 article in the *National Law Review*. "The real debate will be in the terms that EPA eventually settles upon with regard to phase-out and continued use of stockpiled material," she adds.
Environmental groups have been urging the EPA to ban pentachlorophenol for more than 20 years. "This decision has been overdue by decades, but we are encouraged to see EPA moving to remove this chemical off the market," says Jay Feldman, executive director of the advocacy group Beyond Pesticides. In the late 1990s, the group identified about 250 Superfund waste sites contaminated with pentachlorophenol at locations across the US where the chemical was formerly produced. Because of the persistence of the chemical in the environment and its ubiquitous use on utility poles, Feldman is urging the federal government to warn people not to touch utility poles and to keep children from playing near them.

Monday, in accordance with Biden-Harris administration executive orders and directives, the U.S. Environmental Protection Agency asked for additional public input on five final rules for persistent, bioaccumulative and toxic (PBT) chemicals issued Jan. 6 under the Toxic Substances Control Act (TSCA). These rules, which went into effect last month, address exposure to toxic chemicals that remain in the environment for long periods of time and build up in the body.
"These rules are intended to provide critical health protections for Americans, including children, workers, other potentially at-risk groups, and the environment," said Michal Freedhoff, acting assistant administrator for

the Office of Chemical Safety and Pollution Prevention. "Reexamining these rules under the Biden-Harris administration and making any necessary changes to them will ensure we're delivering on the promise to protect human health and the environment by reducing exposure to toxic chemicals."

As a first step in its efforts to immediately review these rules, EPA is opening a 60-day comment period for the public to provide new input on:

√ Whether the rules sufficiently reduce exposure to these chemicals, including exposures to potentially exposed or susceptible subpopulations, and the environment.

√ Newly raised compliance issues associated with the final rule on phenol, isopropylated phosphate (3:1) (PIP (3:1)) including the compliance dates for certain regulated articles.

√ Whether to consider additional or alternative measures or approaches.

This review is being done in accordance with the protecting public health and environment and restoring science to tackle to climate crisis executive order, which asks all agencies to review their actions to ensure they meet statutory obligations, are guided by the best available science, ensure the integrity of federal decision-making, and protect human health and the environment.

EPA will use the feedback received during this public comment period to determine the best path forward, which could include amending the current rules to include additional or alternative exposure reduction measures or extending compliance dates for certain regulated products and articles. Upon publication of the federal register notice, EPA will accept public comments in docket EPA-HQ-OPPT-2021-0202 on www.regulations.gov for 60 days.

As noted above, the notice seeks comment on newly raised issues associated with the March 8 compliance date for the prohibitions on processing and distribution of phenol, isopropylated phosphate (3:1) (PIP (3:1)) for use in articles, and the articles to which PIP (3:1) has been added. Stakeholders recently informed EPA the prohibition on processing and distribution of PIP (3:1) could impact articles used in a wide variety of electronics, from cell phones to robotics used to manufacture semiconductors, to equipment used to move COVID-19 vaccines and keep them at the appropriate temperature.

Stakeholders note the complexity of international supply chains makes locating the presence of, and finding alternatives to, PIP (3:1) in components challenging. They assert an extension to the compliance deadline is necessary to avoid significant disruption to the supply chain for a wide variety of articles.

It was not EPA's intent during the development of the rule to have such a broad disruptive impact. Thus, EPA is also announcing its expectation this specific issue will be addressed as part of the broader reexamination of these rules. Based in part on the information collected as part of the effort announced here, EPA intends to extend compliance dates as necessary for the prohibitions on processing and distribution of PIP (3:1) for use in some articles, and some of the articles to which PIP (3:1) has been added.

For these same reasons, EPA is issuing a temporary 180-day "no action assurance" indicating the agency will exercise its enforcement discretion regarding the prohibitions on processing and distribution of PIP (3:1) for use in articles, and the articles to which PIP (3:1) has been added. The agency is taking this action to ensure the supply chain of these important articles is not interrupted while EPA continues to collect the information needed to best inform subsequent regulatory efforts and allow for the issuance of a final agency action to extend the March 8 compliance date as necessary.

NYS Senator's Bill Would Require DOH To Publicly Report Radiation Data

By ALLISON DUNNE – MARCH 9TH 2021

A New York state senator has introduced legislation that would mandate the state to publicly publish data and analysis about environmental radiation.

> Democratic state Senator Pete Harckham's bill would direct the state health commissioner to publish an annual report on the environmental radiation surveillance program on the department's website and present an analysis of its data.
>
> "This is something that's been required by the state for quite some time, and yet the report has not been published on an annual basis. The data has not been published. And this is important information," says

Harckham. "Environmental pollution has many forms, whether it's air pollution, water pollution and radiological pollution."
Harckham says the state began collecting such data following the March 1979 Three Mile Island nuclear accident in Pennsylvania, the only state to do so. Joseph Mangano is executive director of the Radiation and Public Health Project.
"It's very important because, in 1994, the mandated collection and reporting of information on levels of radioactivity in the environment was halted by the New York state Health Department," says Mangano.
Harckham's 40th District is home to the Indian Point nuclear power plant, where Unit 3 is slated to permanently shut down at the end of April. The plant will then enter decommissioning. Indian Point Unit 2 permanently shut down in April 2020.
"Now while it's an active radiological site, the owner of the site certainly has that responsibility under federal law, but the surrounding community, and once the decommissioning is complete, we need to know that that community is safe," says Harckham.
He says the state does not collect radioactivity data from specific energy generating facilities, as this is required of the facilities' operators for licensing. Mangano is an epidemiologist who is well-known for his studies of Strontium-90 in baby teeth to measure radiation levels in people living near nuclear plants.
"Indian Point next month is going to be closed, so we don't have to worry, right? Well, not correct, because, first of all, we need to know the current levels of radioactivity, especially if they exceed EPA set limits; and b), decommissioning is not exactly a clean process," Mangano says. "It is a, it's a lot of moving things around and, in that process, radioactivity can get kind of stirred up."
He says public reporting would improve accountability.
"This allows us to do better what we do in our group, to do better health studies of disease and death rates in areas near nuclear plants," Mangano says. "It's important to have those rates of community and deaths, but it's also important to know how much radiation is out there and is getting into people's bodies."
Harckham says making the report and analysis available to other state agencies would provide caution to hunters and anglers about consuming animals taken in areas with high radioactive contamination. Harckham believes he will garner support for his bill.
"I think every, every community has a concern for this, whether it's a superfund site, a landfill, naturally occurring radon," says Harckham. "This is another form of pollution that impacts New York state, and we're already taking the measurements; all we're saying is let's have the data and the analysis made public."
The legislation also directs the Department of Health to notify other relevant state agencies if detected radioactive contamination exceeds federal Environmental Protection Agency standards allowed in drinking water or food. A state Department of Health spokesperson did not provide comment in time for this broadcast.
Meantime, the Nuclear Regulatory Commission has issued its final report on the safety performance of Buchanan-based Indian Point, with all 2020 inspection findings and performance indicators green, which means very low safety significance.

Living in a contaminated land: Navajo EPA's assistant director says history of uranium contamination has gone on long enough xyz

U.S. EPA awards contracts for clean-up of abandoned mines

March 9, 2021

In 2019, Annie Henry and Gilbert Badoni revisit the area where they used to live at a uranium mining camp in Slick Rock, Colorado, and found remnants of their former homes. On Feb. 11, the U.S. Environmental Protection Agency (EPA) announced three contract awards for cleanup efforts at more than 50 abandoned uranium mine sites in and around the Navajo Nation. (Kathy Helms/Gallup Independent via AP)

By Stan Bindell, for the Navajo-Hopi Observer
Originally Published: March 9, 2021 9:30 a.m.
WINDOW ROCK, Ariz. — Dariel Yazzie, Environmental Assistant Director for the Navajo Nation Environmental Protection Agency (EPA) takes a deep breath when asked about why the cleanup of uranium mines on the Navajo Nation is important to him.

"It's personal," he said.
Yazzie shares that it has impacted his health and many of his family members' health.
Yazzie grew up in Cane Valley, southeast of Monument Valley, and said his maternal grandfather Luke Yazzie Sr. found uranium mill tailings less than a mile from their homestead. Their home was demolished in 2009 because of the contamination.
In the 1990s, Yazzie survived a diagnosis of cancer and continues to live a fearful life because he doesn't know if it will come back. His father has heart and lung issues from working as a miner and truck driver on the uranium operations. His father's health conditions mean he has to live with Yazzie to be closer to a hospital. His father wants to go home to Cane Valley, but that area is still being cleaned up.
His grandfather and his grandmother died from cancer in the 1990s.
Yazzie said there have been uranium cleanup efforts for 30 years, but they have all been piecemeal leaving the work unfinished.
"It has not been comprehensive so after almost 80 years we ask, 'why, why, why, does it sit so long?'" he asked. "Why does the government not hear us?"
He jokes that it is because the govern-ment does not understand his accent.
According to Yazzie, the $220 million released by the federal government Feb. 11 for cleanup of uranium mines on the Navajo Nation is a good step, but emphasized that a U.S. EPA news release is not accurate. He said the news release makes it appear that the U.S. EPA is working closely with the Navajo EPA, but he said this is not the case.
Navajo EPA needs to be more involved than the U.S. EPA is so far allowing, said Yazzie, who has been working on the uranium mining issues on Navajo since the 1990s.
"The request is to tie into Navajo participation," he said. "The press release shared from the U.S. EPA was a little misleading with what they share because it says they work closely with the Navajo EPA."
While the U.S. EPA has made some efforts to work with the Navajo EPA, Yazzie said they are not coordinating with Navajo EPA to the level desired.
He said the $220 million came from a settlement that was meant for the Navajo, but instead it is going through the federal EPA to contractors.
"We have the U.S. EPA dictating to Navajo the methodology that is used and there is a lot that is not elaborated on," he said. "We don't have input."
According to the U.S. EPA news release, the Navajo Area Abandoned Mine Remedial Construction and Services Contracts (AMRCS), were awarded to Red Rock Remediation Joint Venture, Environmental Quality Management Inc. and Arrowhead Contracting Inc.
"EPA continues to work with the Navajo Nation EPA and local communities to address the legacy of abandoned uranium mines," said Deborah Jordan, Acting Regional Administrator for the EPA's Pacific Southwest office. "These contract awards mark a significant step in this ongoing work."
Most of the funding for the contracts comes from the nearly $1 billion settlement reached in 2015 for the cleanup of more than 50 abandoned uranium mine sites for which Kerr McGee Corporation and its successor, Tronox, have responsibility. In addition to the funds from the Tronox settlement, the EPA and Navajo Nation have secured funding agreements, through enforcement agreements and other legal settlements, for the assessment and cleanup of approximately 200 abandoned uranium mine sites on the Navajo Nation, according to the U.S. EPA.
Yazzie said he is also concerned about who the EPA selects as future contractors.
"We don't know enough about the companies chosen this time," he said. "My research so far shows they are qualified with no standing actions against them."
He said the Navajo EPA did not have participation in selecting these companies and that the Navajo EPA's role in the pending cleanup is as a support agency for US EPA.
"We get to review all documents. We can bring problems to their attention, but according to U.S. EPA Region 9, they are the final decision makers," he said.

Securing a trained workforce

Yazzie said one of the intents to clean up the uranium is to bring as much employment to the Navajo Nation as possible, but he feels the Navajo EPA is being delegated by the U.S. EPA to hire the workers.
"We have been voicing this for a number of years," he said. "We were told we couldn't do that."

The Navajo EPA has been able to do this on other projects such as cleaning up water or air, but the U.S. EPA told them they could not do that legally on the uranium cleanup, Yazzie said. He questions whether this is true. He said the Navajo Nation environmental regulations are more stringent than federal environmental regulations and Navajo EPA workers should be working alongside federal EPA workers.
"I have a fully functioning group that has a superior amount of expertise," Yazzie said.
The project would call for everything from laborers to equipment operators to higher paying technical jobs. Engineers and other specialized workers would need to be brought in.
Workforce training that could be offered by the contractors may cover radiological contamination, health and safety, construction and road building. In addition, the contracts require the selectees to provide quarterly reports to the EPA, Navajo Nation, and the public on cleanup progress, training and Navajo job and business opportunities, according to the U.S. EPA.
"We would prefer that they would come from Navajo, but we have no say on how the contracts work," Yazzie said.
At this point, he does not know how much the jobs will pay.

A long time coming

Uranium mining on the Navajo Nation began in 1944 under the U.S military's Manhattan Project. Widespread uranium mining occurred across the Navajo Nation during the nuclear arms race with the Soviet Union during the Cold War.
Activists say limited environmental regulation occurred prior to the founding of the Environmental Protection Agency in 1970 and the mining has endangered thousands of Navajo workers, as well as contaminating air and water on Navajo lands for nearly 80 years.
"That's too long. Anywhere else in the nation where white Americans live this doesn't exist," he said.
During the Cold War, 30 million tons of uranium ore were mined on or adjacent to the Navajo Nation, leaving more than 500 abandoned mines, according to the U.S. EPA.
Since 2008, the EPA has conducted preliminary investigations at all of the mines, completed 113 detailed assessments, cleaned up over 50 contaminated structures, provided safe drinking water to over 3,000 families in partnership with the Indian Health Service, and completed cleanup, stabilization or fencing at 29 mines, they said.
Preliminary work, including initial process assessment and removal site evaluations, means the cleanup would not begin until 2023.

Connection to Environment

Yazzie said it also needs to be recognized that as indigenous people, they have a distinct connection to the environment.
"We call her our mother," he said.
Yazzie said that means the environment's health goes to the very nature of their own health and vice versa.
"We have practices and protocols on how we address Mother Earth," he said. "We would like to have that included in our efforts."
Yazzie recognizes that this is a foreign idea to some people, but to Indigenous people the environment involves their history and their guidance to life.
"We don't ask them to understand it, but we ask them to respect it," he said. "If we had true engagement, we would not be where we are today. The U.S. EPA is not working with us in the manner used in the press release. If nobody knows about this we will continue with the same rhetoric that has been going back years."

US Government Sues Diesel Truck Turner EZ Lynk Over Emissions Defeat Devices
Ez Lynk allegedly refused to cooperate in an EPA investigation regarding the devices, according to the lawsuit
March 9th, 2021
https://www.thedrive.com/news/39676/us-government-sues-diesel-truck-tuner-ez-lynk-over-emissions-defeat-devices

CALEB JACOBS View Caleb Jacobs's Articles

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Once viewed as scare tactics by the vehicle aftermarket, the United States government's threats to sue companies who it believes bypass emissions rules are more real than ever. Just ask EZ Lynk, the well-known diesel truck tuning firm who's officially fighting the feds in a legal battle as of Monday, March 8.

As reported by *Reuters*, an official complaint was filed in a federal court in Manhattan saying that EZ Lynk has been violating the Clean Air Act since 2016, selling devices that allow Ford, General Motors, and Ram pickups to run without their emissions systems that trap harmful pollutants. What's more, the suit claims that EZ Lynk refused to cooperate with an investigation when they failed to "provide EPA with information about the manufacture, sale, and use" of its tuning devices.

ZACH. T VIA YOUTUBE

A tuned Ford Super Duty diesel pickup.

If you're in-the-know about diesel trucks, or you've been following similar headlines for the past few years, this undoubtedly sounds familiar. For a while, aftermarket companies faced virtually no penalties for selling emissions defeat devices that enabled vehicles to operate without their diesel particulate filter (DPF) and exhaust gas recirculation (EGR) system. The government, though, was essentially lying in wait for said companies to rack up enough sales before suing them for heaps of cash. Such was the case with H&S Performance, a former leader in the diesel tuning scene who was forced to close its doors in 2013 after hefty fines from the Environmental Protection Agency.

It's a hot-button topic but, in a round-about way, shops thought they'd be fine to sell said equipment so long as they labeled it "for off-road use only." That was an easy way to skirt the rules and continue selling these plug-and-play tuners. Others, though, saw the writing on the wall long before. But more on that later.

In the case of EZ Lynk, the device can simply be plugged into a truck's OBDII port and then controlled by a smartphone. Different tunes can be selected and stored in a cloud-based platform, and other aftermarket companies sell their own bespoke tunes that can be installed via an EZ Lynk device. This is where the going gets tricky.

Court papers say that EZ Lynk, which is based in the Cayman Islands, "actively encourages" its customers to use these devices as emissions defeaters. It points to online forums set up by EZ Lynk in which owners discuss their tuners and company employees offer technical support.

"Emissions controls on cars and trucks protect the public from harmful effects of air pollution," U.S. Attorney Audrey Strauss said in an official statement. "EZ Lynk has put the public's health at risk by manufacturing and selling devices intended to disable those emissions controls."

Formally, the lawsuit has been filed against EZ Lynk's co-founders Bradley Gintz and Thomas Wood, as well as Prestige Worldwide, an affiliate. The United States government is seeking civil penalties in addition to daily fines for the defendants allegedly violating the Clean Air Act. An injunction against further sales and installations of EZ Lynk tuners has also been requested.

VIA PPEI

Now, some companies who sell EZ Lynk AutoAgent devices along with custom tunes have taken this into consideration. PPEI is a diesel tuning company owned by Kory Willis, one of the industry's leading voices when it comes to emissions-compliant tuning. On the shop's website, EZ Lynk tuners are listed for sale with options to add anywhere between 15 horsepower and 150 hp. Rather than saying this is strictly for off-road use, though, the site requires you to tick a box acknowledging that the product is only compatible with emissions-present vehicles.

PPEI has even made it to where its tunes won't run if the truck has an aftermarket exhaust.

This, of course, hasn't always been the case with other shops who promoted performance-adding tunes that were clearly less than clean. Black smoke comes aplenty with extra fuel that's not accompanied by more intake air, and it's turned into a symbol that environmentalists love to hate. As the federal government cracks down on more companies involved in diesel tuning, shops and owners alike take a risk when deleting trucks' emissions equipment. As of now, the penalties remain largely at a corporate level.

Got a tip about diesel tuning? Contact the author: caleb@thedrive.come

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Eco Watch- Is Climate Change Making Allergy Season Worse? These Scientists Think So

https://www.ecowatch.com/climate-change-allergy-season-2650992582.html?rebelltitem=1#rebelltitem1

By Sean Fleming

- In the US alone, more than 50 million people have an allergy.
- Climate change is lengthening the duration of natural pollen seasons.
- In the US, pollen seasons are starting 20 days sooner than they did in the 1990s.

It can start with a barely noticeable change to your breathing. Perhaps a little lightheadedness, too. Your eyes start to moisten and your skin tingles. Soon, your synapses will trigger behaviors you cannot control. And there it is – you've sneezed.
When you sneeze, at speeds approaching 160km/h, your mouth and nose expel air, mucus, and germs as far as eight meters away.
During allergy season, some unfortunate souls spend a disproportionate part of their time experiencing some or all of the above. In the US alone, more than 50 million people are allergy sufferers.
Now scientists say climate change could be causing allergy season to start earlier and last longer.

More Pollen for Longer

A team of researchers from institutions across the US has reviewed data relating to pollen trends from 1990 to 2018. The conclusions they came to were that pollen is present in the air 20 days sooner than it used to be and at significantly higher concentrations – as much as 21% up.
Published in the Proceedings of the National Academy of the Sciences (PNAS), the report's authors write: "Airborne pollen has major respiratory health impacts and anthropogenic climate change may increase pollen concentrations and extend pollen seasons."

Tracking pollen across the US: Warm colors indicate increasing annual pollen integrals. PNAS / William R. L. Anderegg et al

Furthermore, their results strongly suggest that "human-caused climate change has already worsened North American pollen seasons." The situation is only likely to get worse, they believe, which could have serious consequences for some people's respiratory health.

Report Advertisement

Increasing Air Quality Pressures

Researchers are also studying how air quality, more broadly, can affect and be impacted by climate change. Changes in the climate can affect local air quality, according to the United States Environmental Protection Agency. These impacts include atmospheric warming's potential to increase ground-level ozone, which can be harmful to health. Experts are also investigating the influence of climate change on fine particulate matter and other air pollutants.

How clean is the air in your country? Visual Capitalist

Historically, burning fossil fuels has been one of the main contributors to the problem of poor air quality. More than 8 million people around the world die each year as a result of breathing poor-quality air, according to research from Harvard University, University College London, the University of Birmingham and the University of Leicester. Mostly, that means air containing dangerous particles from coal, petrol and diesel. Among the causes of death are heart disease, lung cancer, and strokes.
"Allergies and asthma are responsible for substantial morbidity burdens and associated medical costs in the US," the report in PNAS goes on to say.
By connecting the challenges of poor air quality, respiratory health and climate change, the study indicates the potential for serious, ongoing public health crises and warns the situation could worsen as average global temperatures continue to climb.

Report Advertisement

Doing Something About It

Climate change and the efforts to prevent it remains a major global challenge and as the World Economic Forum's latest Global Risks Report highlights, failure to do so presents a serious threat.
But, from global action, like the Paris Agreement or the Misson Possible Partnership, to more targeted initiatives, like the 1t.org (trillion trees) United States Chapter, businesses, governments and civil society are working together to bring about rapid change.

Reposted with permission from World Economic Forum.

Proposal: US Air Force to assist Salt Lake City in mosquito abatement

by: Emma Johnson

Posted: Mar 9, 2021 / 10:23 AM MST / Updated: Mar 9, 2021 / 10:36 AM MST Utah (ABC4) – When people have a mosquito problem they run to the store and get some spray. When a city has a mosquito problem they call in the Air Force, well, at least in Salt Lake City's case.

While the event itself has yet to be officially approved (see the bottom of the story for how to get involved), Salt Lake City has issued a notice and proposal to residents of an upcoming aerial pesticide application.

Ary Faraji, Ph.D., MS, BCE, Executive Director and Entomologist for Salt Lake City Mosquito Abatement District tells ABC4 the Salt Lake City Mosquito Abatement District, SLCMAD, provides mosquito surveillance and control measures for the residents of Salt Lake City and surrounding areas.

"Our primary mission is to ensure the public health safety of all of our constituents from mosquito-borne disease and to enhance their quality of life by ensuring that nuisance mosquito populations are kept at tolerable levels," Faraji shares. "We value every single individual within our jurisdiction and do our best to ensure that mosquitoes and the pathogens that they harbor have limited human and veterinary impact."

New species of mosquito discovered in Moab

Faraji says aerial mosquito management applications are conducted only as a last resort. "These applications are never conducted based on a schedule or recurring cycle. In fact, only a small portion of operations are dedicated for this method," Faraji adds.

He says aerial mosquito control applications are conducted in efforts to prevent high numbers of mosquitoes from dispersing from wetland habitats and biting residents and to prevent the transmission of pathogens to people from mosquitoes.

The need for such applications is determined through an intricate scientific surveillance system that monitors mosquito populations throughout the course of the active mosquito season, generally between May and October, Faraji explains to ABC4.

SLCMAD has over 40 surveillance traps strategically placed throughout Salt Lake City. Faraji the department monitors the number of mosquitoes that are present in space and time, the species composition of those mosquitoes, some a greater health threat than others, and the pathogen infection rates found within those mosquitoes.

Utah West Nile mosquito numbers on the rise

"Aerial applications are only conducted when established surveillance thresholds have been breached and when increased virus activity has been detected in mosquito populations."

Faraji says aerial applications are not conducted over urban or suburban habitats of Salt Lake City, only in rural habitats concentrating over wetland areas north and west of Salt Lake International Airport and will only ever be conducted at night. The upcoming applications are expected to be from August 30 to September 3, 2021.

When the notice of the aerial applications was posted many residents were informed SLCMAD proposed the U.S. Military assist in the applications. According to Faraji, "the United States Air Force has a Spray Unit with Entomologists that respond to epidemics and natural disasters on a national and global scale." The Air Force is often deployed after catastrophic events like flooding, hurricanes, or tornadoes.

They currently work with a variety of districts across the United States on similar projects through a program called the Innovative Readiness Training, IRT, Civil-Military Partnership, Faraji shares. "In fact, they are also conducting herbicide applications in Utah through this IRT program with other partners in response to cheatgrass."

Mosquito season already buzzing

Cheatgrass is an invasive plant that crowds out native plants and increases wildfires in Utah.
The Air Force will also become involved because it provides valuable on-going training for their expert staff during times when they are not responding to an emergency situation, Faraji adds.
"Our interest in working with them is not to increase our aerial applications, but rather to substitute a few of our existing operations using a paid-for-service aerial contractor that we currently utilize. The intent is to have the Air Force conduct one or two applications for us that we would be normally paying our contractor to do. This would lead to an immediate cost savings for our District and thus the residents of Salt Lake City," Faraji shares.
After the application is done, SLCMAD is required to write an Environmental Assessment, EA, that must be vetted through local government groups within the area.
Faraji says the EA was sent to the Utah Department of Environmental Quality in the Division of Water Quality, the UT Department of Health in the Environmental Epidemiology program, and the local chapter of the US Fish and Wildlife Services.
In addition to sharing the process with government agencies, Faraji says he wants the residents of Salt Lake City to be involved. He says he understands this can be a "controversial topic" and appreciates how SLC residents are passionate about health and the environment.
"I want the public to completely rest assured that all aspects of our operations are driven by science and our surveillance. We do not conduct any applications unless deemed absolutely necessary."

Scientists remove 98 'murder hornets' in Washington state

He says chemical control is often the last resort within the district's operations, but a very necessary component for mosquito management and that all products used are labeled specifically for mosquito control provided through the Environmental Protection Agency and regulated through the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Federal pesticide labels are deemed law. Faraji tells ABC4 they abide explicitly by their requirements.
"We feel very confident about our operations and the methods that we are using," Faraji shares.
Want to ask a question or have a concern you want to be addressed? See a copy of the Environmental Assessment. The submission of comments will close on March 31, a final decision will be made during April board meeting.
Learn more about Salt Lake City Mosquito Abatement District.

City and Regional Goals Clash as Newark Pushes Ahead With Low-Density Housing in A Bayshore Flood Zone
***by** Mukta Patil*
March 9, 2021
Florence LaRiviere has fought to protect marshes in the Bay Area for decades. In the 1960s she joined a small group of residents to push for the creation of what would become the Don Edwards San Francisco Bay Area National Wildlife Refuge, a now-30,000-acre haven along the shores of the South Bay that provides habitat for migratory birds and several special status species.

In 1985 LaRiviere began the Citizens' Committee to Complete the Refuge, an all-volunteer organization committed to protecting more of the Bay shoreline. Now in her late nineties, with a voice barely above a whisper, with 60 years of activism experience and a marsh named in her honor in the wildlife refuge, LaRiviere and the Citizens' Committee are still at work. One of their primary goals is expanding the boundaries of the refuge so that it can include neighboring areas, some of which were diked off from the Bay in the past and used to create salt ponds or duck hunting preserves. One of these parcels is Newark's "Area 4."
In November 2019, the city of Newark approved the "Sanctuary West" project for Area 4, a plan to construct 469 single family homes and 2,739 parking spaces. The land borders the Don Edwards National Wildlife Refuge, and conservation groups and state and federal agencies have targeted it for restoration since the 1990s. "Even then we realized the value of that land, but it has become more and more evident how valuable the adjoining uplands are because of how very rare they are now," LaRiviere said.

Area 4 is a rare San Francisco Bay upland habitat. Tidal wetlands move inland over time as sea level rises, but for the most part, in the Bay Area, cities are built right up to the edge of the marsh and the wetlands have nowhere to go. If Area 4 remained undeveloped, it would provide migration routes for endangered species and other wildlife to move upland to survive in the future. However, since it is not protected it remains within the authority of the city to zone, and the city has been steadfast in its plan for low-density housing on the site. City planners would not comment for this story, citing pending litigation, but in 2019, Newark Community Development Director Steven Turner told *Bay Nature*, "the city has consistently felt this is the type of land use they want over the years."

The city approved the development in November 2019. But local and regional activists, planners and scientists have continued to question it. It's not just the habitat loss: most of Area 4 is in the Federal Emergency Management Agency's "AE" flood hazard zone, which means it would be inundated in what hydrologists call a "1-percent storm."

"Restoring wetlands is one of the solutions for climate adaptation," said Mark Lubell, director of the Center for Environmental Policy and Behavior at UC Davis. "Building green infrastructure or living shorelines helps mitigate sea level rise. So you have two things that are working against it being a good idea to develop here — risk of flooding, which already exists since it lies in a FEMA flood zone, and the loss of an opportunity to restore wetlands."

Environmental organizations, including the Citizens' Committee to Complete the Refuge and the Center for Biological Diversity, had a lawsuit to stop the project rejected by the Alameda County Superior Court in December. On February 8, 2021, in response to the rejection, the groups filed an appeal to the 1st District Court of Appeal in San Francisco, stating that the city of Newark's environmental review for the project under the California Environmental Quality Act (CEQA) was flawed and inadequate. But the lawsuit reveals what some planners say is an oversight in environmental law: it's focused on the present.

"In terms of the legal aspect here, it's a future ecological benefit that's being lost, so how is that even adjudicated?" said Mark Stacey, a professor of environmental engineering at UC Berkeley who studies coastal science and policy. "If we imagine what 2100 might look like, with and without this development, it may be that it is one of the few places around the South Bay where tidal marshes are able to survive, because there's space for them to progress."

San Francisco Bay, photographed in 2013 from NASA's LandSAT 8 satellite. (Images by Jesse Allen and Robert Simmon, using data provided by the U.S. Geological Survey and NASA)

Newark isn't alone, planners say: cooperating for future regional benefit at the expense of short-term development considerations – both building and *not* building — has challenged cities around the Bay Area. In a region in which many other cities had approved more housing projects, perhaps there wouldn't be as much pressure on Newark to develop this one – though Zoe Siegel, the climate resilience director at the Greenbelt Alliance, said she thinks Newark has plenty of room to develop climate-smart housing even without using Area 4.

Stacey's work looks at the cascading impacts of not just the kind of housing development that Newark has approved, but also protective infrastructure that cities might want to build to keep higher waters out in the future. As communities, counties, and regional and state agencies prepare for sea level rise and flooding, one group's actions might affect all the others. So while an individual project like Area 4 does not create a physical impact in Bay water levels regionally, if every available part of the shoreline ended up like this, it would. "If we consider each one incrementally and in isolation, it may lead us on a path to where we end up with a regional strategy where shorelines are hardened around most of the Bay perimeter," Stacey said.

While Stacey tries to understand the physical impacts of coastal infrastructure at the regional scale, Lubell studies governance gaps and how to implement adaptation strategies that work for the whole Bay. In a 2017 report funded by the National Science Foundation, Lubell wrote, "these governance challenges are barriers to stakeholder cooperation at multiple geographic levels—local, regional, state, and federal. There are many different governmental and non-governmental actors facing the same sea-level rise problem (in 'the same boat'), and coordination is required to have them 'row in the same direction.'"

State agencies like the San Francisco Bay Regional Water Quality Control Board and the San Francisco Bay Conservation and Development Commission (BCDC) have also reconsidered their strategies as regional

governance groups in an often fractious mix of cities, counties and local agencies. BCDC's role is to regulate filling and dredging in the San Francisco Bay, while the Water Board works on water quality and preservation of wetland acreage. The Newark project has provoked criticism from both. In May 2020, both agencies submitted letters that stated that the city of Newark and the developers had incorrectly concluded that the Water Board and BCDC had no jurisdiction in the area, and that no work could begin on the property without additional permits.

In its letter to the city BCDC reiterated its jurisdiction over areas of the planned development that existed as duck hunting preserves in the 1960s. These managed wetlands would require a permit from the BCDC "for any fill, excavation of materials, or substantial change in use of land or water within the area of the Commission's jurisdiction," the agency wrote.

The Water Board contended in its letter that the construction would result in the discharge of approximately 1.6 million cubic yards of fill at the site to raise the building pads from the 100-year floodplain. The Board added that "even if the proposed discharge avoided wetlands by being placed outside them, it has the potential to impact the wetlands and their associated beneficial uses by altering existing wetland hydrology and the habitat mosaic in which the wetlands currently exist."

With the law mostly unable to consider future harms, environmental groups are pinning their hopes on regulatory bodies like BCDC and the Water Board stepping in.

"We think that we have sufficient authority to review projects both in context of the current tidal situation and for reasonably foreseeable impacts in the future," said Keith Lichten, chief of the Watershed Management Division at the San Francisco Bay Regional Water Board.

In December, the 1st District Court of Appeal (which will also hear the Newark case) ruled that the California Environmental Quality Act does not constrain an agency like the Water Board from imposing further mitigation requirements on a project, even if an environmental impact report has been approved, as it was in Newark. The court ruled on a case brought by the Santa Clara Valley Water District, which challenged the Water Board's waste discharge requirements for a project to control flooding on Upper Berryessa Creek near San Jose.

"One of the outcomes of that decision was to both affirm but also direct the Water Board to evaluate a project's environmental impact with respect to our mandate of water quality impacts, even if the CEQA lead agencies analyses might have been more limited," Lichten said. "One of the concerns for environmental groups when it comes to Newark is that the city didn't go as far as they should have in terms of thinking through environmental impacts. This court case says that the Water Board has not only the authority but the responsibility to do so."

Florence LaRiviere stands in the Don Edwards National Wildlife Refuge, which she was instrumental in helping to create. (Photo courtesy US Fish & Wildlife Service Pacific Southwest Region)

In the last decade both the Water Board and BCDC have taken steps to increase their involvement in regional planning decisions. This has included advisory guidelines, scientific reports and interactions with multiple stakeholders. The question is, will they also make cities listen? There are widely divergent views on which approach to take, carrots or sticks — whether cities need more regulation or more incentives.

As a contribution to regional shoreline management, the Water Board funded a San Francisco Bay Shoreline Adaptation Atlas in 2019. Prepared by the San Francisco Estuary Institute and SPUR, the Atlas divides the Bay shoreline into "operational landscape units" (OLUs), connected geographic areas with common physical traits. The report provides geographically specific and science-based sea level rise adaptation strategies for each unit and suggests constructing or maintaining beaches, marshes, and subtidal reefs to create a resilient shoreline.

"Nature-based approaches, and hybrid measures that integrate nature with engineered structural approaches, may perform better than traditional engineered infrastructure alone," the report concludes. "They can also cost less over time and provide important co-benefits like new recreational opportunities and habitat for native species."

Lichten said he believes the best way to build along the shoreline is for the Water Board to work with project proponents and local governments to develop frameworks, like the OLUs from the Atlas, so that cities and counties can learn more about how the parcel they're considering fits into the region. "It's a lot harder when someone shows up with their fully baked project, and it doesn't look like it makes sense," Lichten said.

The Water Board and BCDC have also looked for guidance on sea level rise to the Ocean Protection Council, a state policy advisory group, which last year released a 2020-25 Strategic Plan to protect California's coast and ocean. A key component of the plan is investment in multi-benefit projects that provide nature-based climate resilience.

Similarly, in 2011 BCDC adopted climate change policies into its regulatory document, the Bay Plan. The agency now requires projects around the Bay shoreline to demonstrate that they are resilient to mid-century and adaptive to end-of-century conditions before they are issued permits. BCDC also runs an Adapting to Rising Tides program, which offers cities and counties support for adaptation plans.

"We are going to be dealing with these issues for a long time, so it's not just a question of how we adapt the shoreline but how we approach our governance for it in the long run that matters," said Jessica Fain, director of planning at BCDC.

In 2020, BCDC created a program called Bay Adapt, an attempt to bring together all the actors that are part of the adaptation process to form some agreements around how to coordinate. The first draft of the "Bay Adapt Joint Platform of Actions" proposes 15 actions, including establishing a regional vision and consistency framework so that each city isn't left on its own to figure out what to do. Fain said she hopes that BCDC will adopt these action items and implement them before the end of 2021.

The requirement for a platform like Bay Adapt stems from the idea that a "local only" approach will lead to uneven, unequal, under-funded, and uncoordinated outcomes that will hamper adaptation goals and cost far more in the long run. These actions, if implemented together and everywhere, will not only fill the governance gaps from Lubell's work but also take into account Stacey's cascading regional infrastructural impacts. Whether advisory actions from authorities will be enough for cities to go along with a bigger plan or whether the local-regional tensions will require a more regulatory approach remains to be seen.

One of the most successful multi-agency initiatives (which includes the Water Board and BCDC) is the San Francisco Bay Restoration Regulatory Integration Team (BRRIT), a team of staff from the six state and federal regulatory agencies with jurisdiction over permitting habitat restoration projects in and around the San Francisco Bay. Under the aegis of the San Francisco Bay Restoration Authority, local developers can apply to coordinate with BRRIT during the planning phase of a project on "early review, project input and guidance, identifying agency requirements that need to be met, and resolving regulatory issues early in the planning process." The geographical scope of BRRIT includes uplands adjacent to potential or actual tidal wetlands that can provide transitional habitat and/or marsh migration space.

"One of the things that we are excited about with the change in presidential administration is the ability to recognize climate change and rising tides as a threat, and to potentially to free up some federal resources to take these kinds of actions that make sense from an environmental perspective and are more cost effective over the long term," Lichten said.

Still, as Newark's Area 4 development project shows, regulatory agencies can't force cities to consider the interests of the region or the future. The project developer hasn't approached BCDC or the Water Board with permitting requests, but most environmental organizations want more than just a handful of additional mitigation measures. They've advocated from the beginning for the parcel to be bought out in its entirety and protected for its future ecological benefits.

"Is it humane to build in an area like this?" Florence LaRiviere said. "Such an expansive open space shouldn't be used for expensive, gated houses. Its value is in keeping it undeveloped for everyone — the people and the critters that live here, and to ensure their future."

DLNR fined nearly $222K for operating cesspools
March 9th, 2021
The Maui News
https://www.mauinews.com/news/local-news/2021/03/dlnr-fined-nearly-222k-for-operating-cesspools/

HONOLULU (AP) — The Hawaii Department of Land and Natural Resources has been fined nearly $222,000 for operating seven large-capacity cesspools on Kauai island.

The Environmental Protection Agency banned the type of cesspool targeted in 2005 because they can pollute water resources and violate the Safe Drinking Water Act, Hawaii News Now reported Thursday.
The cesspools were at Camp Hale Koa, the Waineke Cabins and at a commercial property, the television station reported.
The EPA has taken action before against the department, has collected over $400,000 in fines and closed 74 cesspools.
Cesspools collect and release untreated raw sewage into the ground, where pathogens and harmful chemicals can contaminate groundwater, streams and oceans.
Groundwater provides about 95 percent of the local water supply in Hawaii, Hawaii News Now reported.

'HARVEST' WATER WITH THESE RAIN BARRELS GOING ON OFFER FROM PASADENA WATER AND POWER
https://www.pasadenanow.com/weekendr/pasadena-water-and-power-joins-other-local-utilities-offer-rain-barrels-to-harvest-water/
Pasadena Water and Power, along with the Foothill Municipal Water District, the Crescenta Valley Water District, Liberty Utilities, Glendale Water and Power, and Burbank Water and Power are hosting a five-day rain barrel distribution event from March 22 through 26 in which customers can easily pre-order a rain barrel online – and all orders will include contact-less delivery.
Rain barrels capture – or "harvest" – water from your roof and hold it for later use, such as for watering the lawn, garden, or indoor plants. By collecting roof runoff using rain barrels, you reduce the amount of water that flows from your property. This way, you help conserve water and collect free water for use on your landscape.
Rain barrels not only help save money on your water bills but they also reduce erosion and flooding caused by turbulent stormwater runoff. According to the Environmental Protection Agency (EPA), rain barrels have the ability to save the average homeowner up to 1,300 gallons of water, which is a lot of water that does not become runoff.
Other than rain barrels, homeowners may also use cisterns to "harvest" rainwater. With a greater storage capacity, cisterns may be located above or below ground.
At this PWP rain barrel distribution event, all rain barrels will be delivered directly to your front porch between March 22 and 26. Residents do not need to be present during delivery.
Each rain barrel costs $65 but partial and full amount rebates are available.
Rain barrels are made of recycled food-grade plastic, 39 inches tall and 23 inches in diameter, and with a capacity of over 51 gallons. Each barrel includes a four-inch tight steel mesh screen, and available in black or terracotta colors. There's also a solid brass 3/4-inch spigot for garden hose attachment and side brass overflow.
Each household can order up to two rain barrels with rebates. Only Pasadena residents receive rebates for the full price of the rain barrel; all other cities or water agencies offer $35 per barrel.
Pre-order is required, so visit www.rainbarrelsintl.com/events-order.asp?id=458 now to order.
For more information, contact info@RainBarrelsIntl.com, or call (626) 744-4005.

Message

From: E&E News [ealerts@eenews.net]
Sent: 3/18/2021 11:22:08 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 18 -- E&E Daily is ready

E&E Daily -- Congress. Legislation. Politics.

Read today's E&E Daily on the web

E&E DAILY
AN E&E NEWS PUBLICATION

E&E DAILY — Thu., March 18, 2021

READ FULL EDITION

1. TRANSPORTATION:

House Democrats weigh big investments in EVs, climate

House Transportation and Infrastructure Democrats are laying the groundwork for big investments in electric vehicles and green infrastructure amid growing support for climate policy in the private sector.

A message from POLITICO:

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TOP STORIES

2. ENERGY POLICY:

Kaptur considers more DOE financing to reduce emissions

3. APPROPRIATIONS:

Republicans eye earmarks for water, environment spending

4. AGRICULTURE:

Tax policy: Field of opportunity, risk for farm groups

POLITICS

5. CAMPAIGN 2022:

Science group wants to double spending for midterms

6. Q&A:
Tom Steyer on Biden's climate moves, private-sector action

ADMINISTRATION

7. NOMINATIONS:
Biden taps Obama-era official for State energy post

CLIMATE

8. APPROPRIATIONS:
Democrats kick-start Green Climate Fund spending fight

9. DEFENSE:
Lawmakers, experts push military clean energy transition

10. ADVOCACY:
Progressive groups offer $2.3T climate wish list

ON THE HILL

11. INFRASTRUCTURE:
Lawmakers, advocates beg for major water spending

12. FEDERAL AGENCIES:
Panel approves PFAS, government oversight bills

IN COMMITTEE

13. ENERGY POLICY:
Republicans object to hearing focused on Texas blackouts

14. COAL:
Senate Dems pitch bill to boost black lung aid access

15. FISHERIES:
Cantwell, Wicker revive bill to speed up disaster aid

16. FORESTS:
Calif. lawmakers introduce road maintenance bill

UPCOMING HEARINGS AND MARKUPS

17. CALENDAR:
Activity for March 15 - March 21, 2021

A message from POLITICO:

GO BEHIND THE FIRST 100 DAYS: Joe Biden entered the White House with an expansive agenda, including rethinking energy and climate policy. Keep up to date on his agenda with POLITICO's First 100 Days to track the 46th president's efforts to reshape policy and politics. Follow along as we chronicle the regulation and legislation used to enact an agenda. **Check out the First 100 Days now.**

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Message

From: E&E News [ealerts@eenews.net]
Sent: 2/17/2021 12:04:10 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: February 17 -- Climatewire is ready

Climatewire -- Policy. Science. Business.

Read today's Climatewire on the web

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Wed., February 17, 2021

READ FULL EDITION

1. ENERGY TRANSITIONS:
Texas grid collapse points to looming climate tests

The power grid in Texas nearly melted down during a heat wave in 2019. Now a deep freeze is causing widespread blackouts. The whiplash crises warn of what's to come in a warming world, expert say.

TOP STORIES

2. POLITICS:
'The windmills failed.' Texas crisis fuels climate attacks

3. POLITICS:
Carbon was $1 under Trump. It's about to skyrocket

POLITICS

4. PANDEMIC:
Virus swamps federal plan to cut disaster aid for states

CLIMATE IMPACTS

5. FLORIDA:
Miami launches plan to counter climate gentrification

6. WILDLIFE:
Late ice cramps anglers' appetite, research of crucial fish

IN THE STATES

7. MAINE:
Lawmakers fear new forest rules could hurt conservation

8. INDIANA:

Lawmakers debate environmental regulation, rollbacks

INTERNATIONAL

9. UNITED KINGDOM:

Government funds shift to hydrogen home heating

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ABOUT CLIMATEWIRE -- POLICY. SCIENCE. BUSINESS.

Climatewire is written and produced by E&E News, which is staffed by a dedicated reporting team within the POLITICO newsroom. It provides comprehensive coverage of all aspects of climate change issues. From international agreements on carbon emissions to alternative energy technologies to state and federal GHG policies to corporate sustainability, Climatewire plugs readers into the information they need to stay abreast of this complex issue. Climatewire publishes daily by 7:00 a.m.

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Message

From: Enos, Kendra [Enos.Kendra@epa.gov]
Sent: 3/10/2021 5:01:42 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips: Morning Edition 3-10-21

Daily News Clips - Morning Edition
March 10th, 2021

Agency
John Wagner, Washington Post - Senate poised to approve nominations of Garland as attorney general, Fudge as housing secretary, Regan as EPA administrator
Matthew Choi, Politico - Regan and Haaland see the finish line
Emissions
Tim Renaud, Count on 2 News - DHEC: Berkeley County School District to receive funding aimed at reducing diesel emissions
Energy
Georgia-Pacific, PRNewsWire - Georgia-Pacific's Brewton Containerboard mill recognized as first paper mill in Alabama, fourth nationally, to earn the EPA's Energy Star Challenge Achiever for Industry Award
Oil
Melissa Turntinen, Bring Me The News Minnesota - 2 Lyon County men plead guilty after causing 3,900 gallons of oil to spill into river
Water
Jacob Fenston, DCist - High Levels Of 'Forever Chemicals' Found In Northern Virginia Water
KFOR Oklahoma, Salvador Rivera - House, Senate bills designate EPA to head all water cleanup along southern border

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Agency
Senate poised to approve nominations of Garland as attorney general, Fudge as housing secretary, Regan as EPA administrator
https://www.washingtonpost.com/politics/2021/03/10/joe-biden-live-updates/

By John Wagner

Merrick Garland, President Biden's pick to be attorney general, answers questions before the Senate Judiciary Committee on Feb. 22.
The Senate is poised Wednesday to confirm Merrick Garland as attorney general, Rep. Marcia L. Fudge (D-Ohio) as secretary of the Department of Housing and Urban Development and Michael Regan to be administrator of the Environmental Protection Agency.

Garland and Fudge cleared procedural hurdles on Tuesday as the Senate voted to limit debate. The vote to move forward with Garland's nomination was 70 to 29, while the vote to move forward with Fudge's nomination was 69 to 30.

Garland, a federal judge whom Republicans refused to consider when President Barack Obama nominated him to the Supreme Court in 2016, said at his confirmation hearing that his first briefing would focus on the Jan. 6 riot at the U.S. Capitol and the criminal cases that have emanated from it.

At her confirmation hearing, Fudge said she would confront the immediate challenge of keeping millions of Americans from losing their homes amid the coronavirus pandemic, while also ending discriminatory housing policies as part of Biden's push to dismantle systemic racism.

A vote to limit debate is scheduled Wednesday afternoon on the nomination of Regan, who currently heads the North Carolina Department of Environmental Quality. If that motion passes, as expected, the Senate will later vote on Regan's confirmation.

During his confirmation hearing, Regan told senators that he would "restore" science and transparency at the EPA, focus on marginalized communities and move "with a sense of urgency" to combat climate change.

Agency
Regan and Haaland see the finish line
https://www.politico.com/newsletters/morning-energy/2021/03/10/regan-and-haaland-see-the-finish-line-793889

Regan and Haaland see the finish line
By MATTHEW CHOI 03/10/2021 10:00 AM EST
With help from Kelsey Tamborrino, Anthony Adragna and Alex Guillén

QUICK FIX
— Biden's EPA and Interior picks inch toward the finish line. Michael Regan could be voted in today, and the Senate may take up Rep. Deb Haaland by the end of the week.

— Democratc Sen. Martin Heinrich is urging the White House to not permanently ban federal oil and gas leases, leaning into the administration's pledge to focus on jobs in its energy transition plans.

— John Kerry is in Paris today finishing up his Euro trip. Kerry and his European counterparts have been strategizing over convincing China to get emissions under control.

DRIVING THE DAY
REGAN AND HAALAND ARE ALMOST THERE: The Senate looks likely to vote on Michael Regan's nomination for EPA administrator today before moving on to final deliberations on Rep. Deb Haaland for Interior secretary. Regan, a former North Carolina environmental regulator, said he planned to employ a wide-reaching toolbox to combat climate change and bring on board an adviser dedicated to environmental justice. The Senate Environment and Public Works Committee voted 14-6 to advance his nomination last month.

Following Regan, Haaland's nomination will face the full chamber this week after Senate Majority Leader Chuck Schumer filed cloture on her nomination Tuesday. Her confirmation process has been far more tumultuous, and Republicans still aren't going quietly. Sens. Steve Daines (R-Mont.) and Cynthia Lummis (R-Wyo.) said Tuesday they would slow Haaland's nomination. Several Republicans have loudly criticized her as a progressive hostile to fossil fuels — a stance Daines reiterated in a statement on Tuesday: "Her views will hurt the Montana way of life and kill Montana jobs. We must consider the impact she will have on the West."

Rep. Deb Haaland's confirmation process is approaching its end after Senate Majority Leader Chuck Schumer filed cloture on her nomination Tuesday. | AFP/AP Photo

But the opposition is in vain, since Haaland has gained enough support among Democrats — as well as the backing of at least two Republicans — to be confirmed as the first Native American Cabinet secretary.

An initial procedural vote on Regan's nomination is slated for today shortly after 2:15 p.m. He'll likely then have his final vote two hours later. Pro's Anthony Adragna has more.

Emissions

DHEC: Berkeley County School District to receive funding aimed at reducing diesel emissions
https://www.counton2.com/news/local-news/berkeley-county-news/dhec-berkeley-county-school-district-to-receive-funding-aimed-at-reducing-diesel-emissions/

by: Tim Renaud
Posted: Mar 10, 2021 / 10:49 AM EST / Updated: Mar 10, 2021 / 10:49 AM EST

BERKELEY COUNTY, S.C. (WCBD) – The Berkeley County School District will receive more than $40,000 to help replace a diesel bucket truck in an effort to reduce diesel emissions across the state.

South Carolina's lead health agency received an allocation of funding from the Environmental Protection Agency to fund the state's Diesel Emissions Reduction Act (DERA) program.

According to the Department of Health and Environmental Control, diesel engines produce numerous pollutants that are harmful to human and environmental health, and DERA grants support projects for reducing these emissions.

"We're looking forward to partnering with several local organizations through these 2020 state DERA grants," said Rhonda Thompson, DHEC Chief of the Bureau of Air Quality. "For the last 12 years, DHEC has utilized DERA grant funds to reduce air pollution produced by aging diesel engines and equipment while simultaneously supporting local businesses and governments throughout South Carolina."

For the 2020 State DERA program, DHEC awarded four grants:

Haig Point Club & Community Association (Hilton Head Island, Beaufort County); awarded $139,308 to help repower a ferry with new diesel engines
Palmetto Propane, Fuels and Ice, Inc. (Batesburg, Lexington County); awarded $66,104 to help replace two diesel tanker trucks with new trucks that will run on propane fuel
Berkeley County School District (Moncks Corner, Berkeley County); awarded $40,534 to help replace a diesel bucket truck
Green Energy Biofuel (Winnsboro, Fairfield County); awarded $39,625 to help replace one diesel service truck and one diesel vacuum truck
DHEC expects to receive another allocation from the EPA for the 2021 State DERA program in fall 2021.

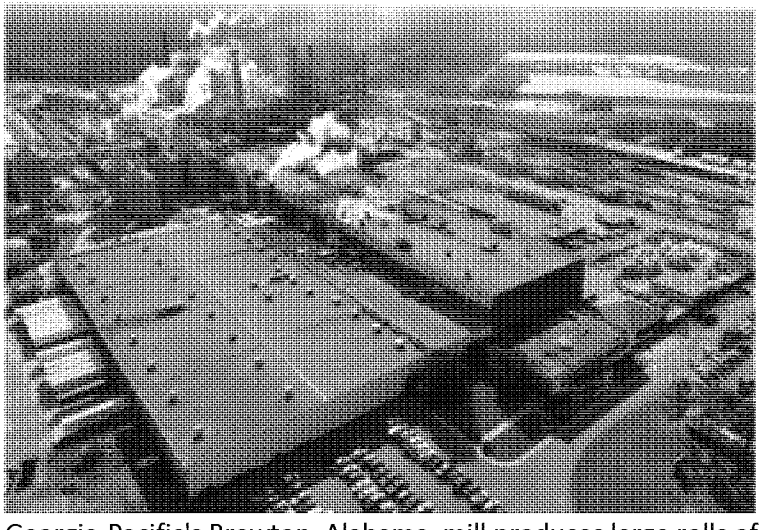
To learn more about DERA grant opportunities and previous projects funded by DERA grants in South Carolina, visit DHEC's DERA webpage..

Energy

Georgia-Pacific's Brewton Containerboard mill recognized as first paper mill in Alabama, fourth nationally, to earn the EPA's Energy Star Challenge Achiever for Industry Award
https://www.prnewswire.com/news-releases/georgia-pacifics-brewton-containerboard-mill-recognized-as-first-paper-mill-in-alabama-fourth-nationally-to-earn-the-epas-energy-star-challenge-achiever-for-industry-award-301243944.html

NEWS PROVIDED BY Georgia-Pacific
Mar 10, 2021, 09:00 ET

The recovery boiler at Georgia-Pacific's Brewton mill burns residual material from the paper-making process and generates steam to power the entire mill. The structure has 15 floors and is 226-feet tall, and includes a 75-megawatt turbine that can generate enough electricity to serve 60,000 homes, or the entire city of Auburn, Ala. The $388 million project went online in 2016.



Georgia-Pacific's Brewton, Alabama, mill produces large rolls of paperboard products used to make corrugated boxes and paper plates. The facility employs more than 400, with an annual payroll and benefits of approximately than $36 million.

BREWTON, Ala., March 10, 2021 /PRNewswire/ -- Georgia-Pacific's Brewton Containerboard mill has been named a 2020 Energy Star Challenge Achiever for Industry by the United States Environmental Protection Agency (EPA), a program developed by the agency to recognize individual facilities for volunteering to reduce energy intensity by 10% within five years.

To earn this recognition, the Brewton mill improved energy intensity by 11.2% in four years, resulting in an annual savings of approximately $2.6 million. Brewton becomes the fourth paper mill in the U.S. to achieve this prestigious

designation, joined by three other Georgia-Pacific paper mills located at Palatka, Florida; Green Bay (Broadway Mill), Wisconsin; and Muskogee, Oklahoma.

"As a company, we continually look for ways to advance environmental excellence, which includes working to consume fewer resources such as energy," said Tommy Blaylock, Brewton mill vice president and mill general manager. "As a business neighbor within the region, we have a vested interest doing the right things and I'm extremely proud of our team's focus around energy efficiency and reduction efforts."

Blaylock attributes much of the mill's success in energy reduction to the 2016 installation of the mill's recovery boiler and evaporator, a $388 million project that burns residual material from the paper-making process to generate steam to power the mill. The project included a 75-megawatt turbine that can generate enough electricity to serve 60,000 homes, or the entire city of Auburn, Alabama.

The Brewton mill produces large rolls of paperboard products used to make corrugated boxes and paper plates. The facility employs more than 400, with an annual payroll and benefits of approximately than $36 million.

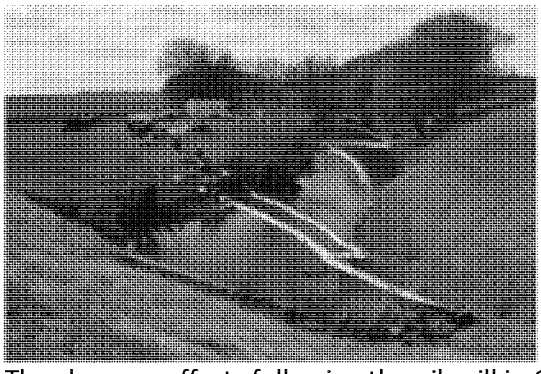
According to the EPA, if the energy efficiency of U.S. commercial and industrial buildings improved by 10%, Americans would save about $20 billion and reduce greenhouse gases equal to approximately 30 million vehicles.

About Georgia-Pacific
Based in Atlanta, Georgia-Pacific and its subsidiaries are among the world's leading manufacturers and marketers of bath tissue, paper towels and napkins, tableware, paper-based packaging, cellulose, specialty fibers, nonwoven fabrics, building products and related chemicals. Our familiar consumer brands include Quilted Northern®, Angel Soft®, Brawny®, Dixie®, enMotion®, Sparkle® and Vanity Fair®. Georgia-Pacific has long been a leading supplier of building products to lumber and building materials dealers and large do-it-yourself warehouse retailers. Its Georgia-Pacific Recycling subsidiary is among the world's largest traders of paper, metal and plastics. The company operates more than 150 facilities and employs approximately 30,000 people directly and creates more than 80,000 jobs indirectly. For more information, visit: gp.com/about-us. For news, visit: gp.com/news

About ENERGY STAR
ENERGY STAR® is the government-backed symbol for energy efficiency, providing simple, credible, and unbiased information that consumers and businesses rely on to make well-informed decisions. Thousands of industrial, commercial, utility, state, and local organizations—including more than 40 percent of the Fortune 500®—rely on their partnership with the U.S. Environmental Protection Agency (EPA) to deliver cost-saving energy efficiency solutions. Together, since 1992, ENERGY STAR and its partners have helped save American families and businesses $430 billion on their energy bills*—while also achieving broad emissions reductions—all through voluntary action.

Oil
2 Lyon County men plead guilty after causing 3,900 gallons of oil to spill into river
https://bringmethenews.com/minnesota-news/2-lyon-county-men-plead-guilty-after-causing-3900-gallons-of-oil-to-spill-into-river

The U.S. Attorney's Office says they shot a rifle at the pipeline, causing it to spill into a creek that connects to the Yellow Medicine River.
MELISSA TURTINEN



The clean-up efforts following the oil spill in Cottonwood.
Minnesota Pollution Control Agency

Two Minnesota men have pleaded guilty to shooting an AR-15 rifle at a diesel oil pipeline, causing it to spill 3,900 gallons of oil into the Yellow Medicine River.

Eric Jay Weckworth-Pineda, 25, of Cottonwood, and Tanner John Sik, 21, of Ivanhoe, were convicted this week of one count each of negligent discharge of a pollutant in connection to the April 24, 2019, incident, the U.S. Attorney's Office says.

“The reckless behavior of these defendants led to significant damage to the Magellan Pipeline and subsequent release to the Yellow Medicine River,” Jennifer Lynn, Special Agent in Charge of the EPA’s criminal enforcement program in Minnesota, said in a statement. “EPA will continue to hold individuals responsible for their environmental violations and the resulting harm.”

According to the pair's guilty plea they went to a bridge on the north side of Cottonwood Lake in Lyon County that spans a dam between the lake and a creek. The creek flows directly into the Yellow Medicine River, which then flows into the Minnesota River downstream of Granite Falls, the Minnesota Pollution Control Agency (MPCA) says.

Sik and Weckworth-Pineda brought guns to the bridge for some target practice, with the U.S. Attorney's Office saying Sik used a DPMS AR-15 rifle to "fire multiple shots at a diesel fuel pipeline" that runs perpendicular across the creek, while Weckworth-Pineda used the scope on his rifle to spot the shots.

They admitted multiple shots hit the pipeline and one shot ruptured the pipe, noting later that day they saw the pipeline was leaking, the release says. They reported the leak to authorities.

The owner of the pipeline, Magellan Midstream Partners, noticed the leak and the "quick and efficient response" led by the Cottonwood Fire Department contained the spill and cleaned it up with "minimal harm," the MPCA said.

Magellan Midstream said the pipe's rupture caused at least 3,906 gallons of fuel to spill into the creek, which cost more than $1.2 million to clean up and repair the pipeline. The federal EPA said it spent more than $16,000 in assisting the clean-up efforts, the release said.

Weckworth-Pineda and Sik, who were charged on Oct. 8, 2020, will be sentenced at a later date. They each face up to a year in prison and are liable for up to $1,138,772.06 in restitution, the U.S. Attorney's Office said.

Water

High Levels Of 'Forever Chemicals' Found In Northern Virginia Water
https://dcist.com/story/21/03/10/high-levels-toxic-pfas-forever-chemicals-northern-virginia-drinking-water/

They’re known as “forever chemicals,” because they linger in the environment and our bodies … forever.

And new testing by the Environmental Working Group found the cancer-causing chemicals to be present in drinking water in Northern Virginia at higher levels than elsewhere in the D.C. region — and among the highest in the United States.

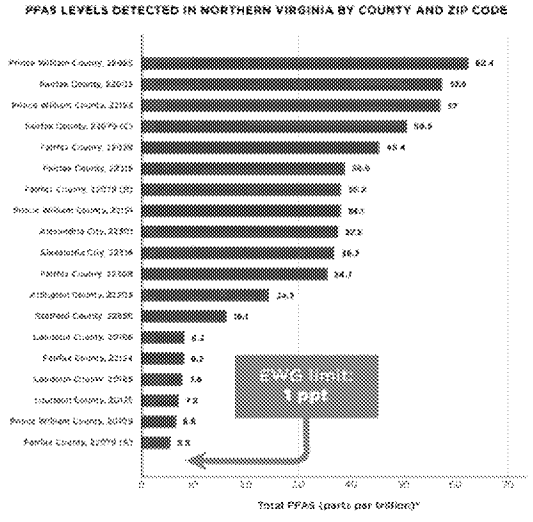
The chemicals, known as PFAS (short for per- and polyfluoroalkyl substances), have been used in all sorts of products — from carpet to firefighting foam — since the 1940s. In many uses, the chemicals help make materials water repellent or stain repellent. But PFAS chemicals can cause myriad health problems in humans, including increased cholesterol levels, thyroid problems, cancer, and low infant birth weights, according to the Environmental Protection Agency.

The D.C.-based Environmental Working Group tested tap water at 19 locations in Northern Virginia, including Alexandria, Arlington, Fairfax County, Loudoun County, and Prince William County.

"The samples come directly from taps across the Northern Virginia area," says Sidney Evans, a science analyst with the group who worked on the testing project. Samples were taken at public parks, gas stations, private residences and elsewhere.

The results showed the chemicals were present at levels ranging from 5.5 parts per trillion, or ppt, at one site in Fairfax County to 62.4 parts per trillion at a site in Prince William County.

The levels found in some Northern Virginia locations are significantly higher than what the Environmental Working Group found in a round of national testing released a year ago. In that report, PFAS were found in D.C. at 21.7 ppt and in Prince Georges County, Maryland. at 17.8 ppt.



The group had planned to do further testing around the country, but that wasn't possible because of the pandemic and associated travel restrictions. So, staff at the nonprofit group decided to do some more testing close to home.

"It's really quite shocking to be the one doing this testing and get these kinds of test results back," says Evans. "I live in the Northern Virginia area, so while this issue was always important to me, it's personal now."

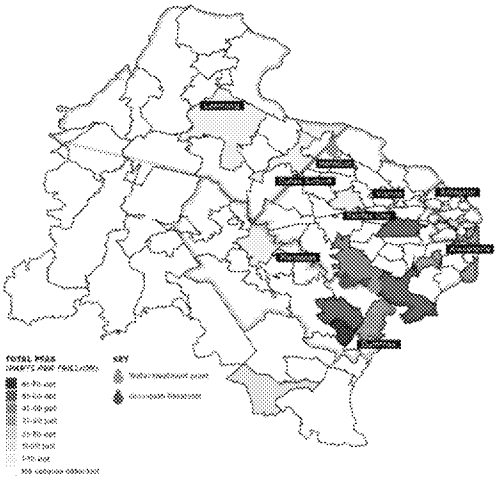
The EPA does not actually regulate PFAS chemicals, so there is no upper legal limit. However the EPA does have a non-enforceable health-advisory recommending PFAS levels below 70 ppt. The PFAS levels found in Northern Virginia are within the range that the EPA considers safe.

But the EPA's level is far too high, according to environmental activists. The Environmental Working Group is advocating for setting a level of 1 ppt. The Natural Resources Defense Council has suggested a level of between 2 and 7 ppt.

There are thousands of different PFAS chemicals — some are still in production, while others that have been phased out.

A spokesperson for Fairfax Water declined an interview. In an email, she noted that the water utility has conducted its own testing, and did not find any PFAS. However, in testing by Fairfax Water, only six PFAS chemicals were targeted, while the Environmental Working Group tested for 30 chemicals.

As for why Northern Virginia PFAS levels appear to be higher than elsewhere in the region, Evans says it may be due to using a different the source of drinking water. Most drinking water in the D.C. region comes from the Potomac River, but in parts of Northern Virginia tap water also comes from the Occoquan Reservoir. Testings sites closer to the reservoir had higher PFAS numbers.



Evans says the findings point to the need for more testing and federal regulation of forever chemicals. In the meantime, she says residents concerned about PFAS can use a household water filter to remove the chemicals. Reverse osmosis filters are the most effective, followed by activated carbon filters.

Water

House, Senate bills designate EPA to head all water cleanup along southern border
https://kfor.com/border-report/house-senate-bills-designate-epa-to-head-all-water-cleanup-along-southern-border/

by: Salvador Rivera
Posted: Mar 10, 2021

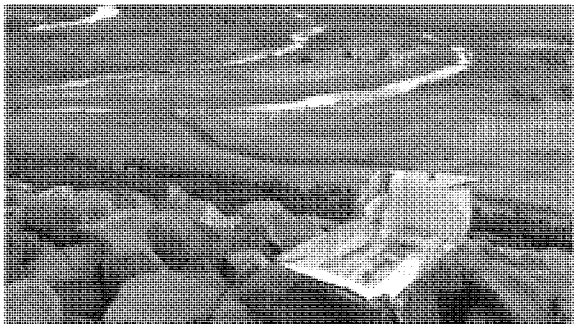
SAN DIEGO (Border Report) — A bipartisan group of California lawmakers is confronting pollution problems along the U.S.-Mexico border, especially in the Tijuana River Valley between San Diego and Tijuana.

Several House members who repres ent Southern California introduced a bill called the Border Water Quality Restoration Act. Similar legislation was presented last week in the U.S. Senate.

Boom system installed south of the border to prevent trash from flowing into U.S.
If approved, it will give the Environmental Protection Agency the authority to coordinate all federal, state, and local agencies when planning construction and infrastructure projects to mitigate pollution in waterways throughout the southern border.

“The biggest challenge in addressing this environmental and public health crisis is that a majority of the pollution results from transboundary flows,” said Democratic Rep. Juan Vargas, whose district covers the entire border between California and Mexico. “Addressing cross-border pollution in our region requires strong communication between agencies from both sides of the border.”

'It's working': Boom system set up in Tijuana stops piles of trash from flowing into California
A few years ago, when the United States, Mexico and Canada trade agreement was drafted, $300 million was included to fund cleanup efforts in areas like the Tijuana River Valley and the New River between the Imperial Valley in California and Mexicali just south of the border.



The Tijuana River Valley is lined with trash that comes from south of the border including what used to be a refrigerator. (Salvador Rivera/Border Report)
"The people of Southern California have been forced to suffer while different federal agencies keep passing the buck," said U.S. Sen. Dianne Feinstein, D-California. "This bill will put an end to the confusion by putting the EPA in charge of coordinating efforts and fixing the problem, this long-standing issue that must be addressed now."

The bill in Congress is generating bipartisan support, even Republicans appear to embrace the Border Water Quality Restoration Act.

"This is a comprehensive solution that incorporates local engagement to determine the best use of federal resources, and I believe our bipartisan approach will make the critical difference in resolving a problem that has impacted the San Diego region for many years," said Rep. Darrell Issa, a Republican who represents California's 50th District.

Environmental groups like WILDCOAST, based in San Diego, are also in favor of the legislation.

If it does pass, it could be a year or two before any cleanup projects are expected to begin.

Message

From: Enos, Kendra [Enos.Kendra@epa.gov]
Sent: 2/17/2021 5:07:41 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips: Morning Edition 2-17-21

Daily News Clips - Morning Edition
February 17th, 2021

Agency
New action on horizon for sustainable materials management under Biden, experts predict
Emissions
Democrats May Invoke Congressional Review Act to Reverse Recent EPA Rules
Energy
Trump's energy plan was vacated and Obama's is outdated. What's next?
Superfund
Missoula County finds EPA work lacking on Smurfit health risk
Waste Cleanup
EPA awards $220M contracts for uranium mine cleanup
50 abandoned uranium mines + a mess = $220M from EPA
Water
Senate Intel leader demands answers on Florida water treatment center breach

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Agency
New action on horizon for sustainable materials management under Biden, experts predict
https://www.wastedive.com/news/biden-epa-materials-management-recycling-organics-policy/594886/

Recycling market development and food waste are among many issues stakeholders hope will receive renewed federal engagement, despite limited attention in the president's agenda to date.

AUTHOR: Cole Rosengren

As President Joe Biden's administration takes shape, with a stated focus on climate change and economic recovery, a broad range of stakeholders see a prime moment to advance materials management policy.

While many elements of U.S. waste and recycling policy are decentralized, issues such as reducing food waste, improving recycling infrastructure and enhancing markets for various materials have often been bipartisan federal priorities. Funding and legislative decisions from Congress remain a key factor, and multiple agencies have potential roles to play – with the U.S. EPA receiving the greatest attention.

Beyond the anticipated confirmation of Michael Regan as the next administrator, sources are also watching to see who will be nominated as assistant administrator of the Office of Land and Emergency Management (OLEM) as that position has the most direct involvement with materials management issues. Whenever new leadership takes the helm, experts see many ways to accelerate the agency's long-running work on waste and recycling.

“During my time that office – really with tremendous analytic leadership of career staff – laid the foundation for shifting from a waste management paradigm to a sustainable materials management paradigm, the use of life cycle-based analysis, the greenhouse gas reduction potential," said Mathy Stanislaus, who led OLEM under Obama. “That foundation is there for the next quantum leap forward on circularity.”

Upstream focus

Many feel the top tier of the waste hierarchy often gets the least attention, and in Stanislaus' view, the U.S. is "behind the curve" on circular economy policies.

In a potentially reimagined hierarchy, he said greater emphasis could be placed on maximizing the retention of products for as long as possible, improving design to extend product lifespans and enhancing options for repurposing or remanufacturing when those lifespans run their course. In cases where challenges remain – for example, with some plastics – minimum recycled content recommendations or certain types of financial incentives could be considered.

Lithium-ion batteries are another area where Stanislaus sees potential to reduce emissions and mitigate the social impacts of raw material extraction.

“I think there needs to be a broad focus on the nexus of the battery life cycle and the crucial need to increase its utilization, and reducing cost," said Stanislaus, interim director of the World Economic Forum's Global Battery Alliance.

He cited the potential to achieve an estimated 30% of the Paris climate agreement's greenhouse gas reduction goals for the transportation and power sectors with greater focus on maximizing battery use, enhancing second use options and scaling up limited U.S. battery recycling infrastructure. Such efforts have attracted attention from a variety of federal entities, and are expected to become more pressing as electric vehicle adoption ramps up.

Other groups also see room for the EPA to drive upstream results for plastics. A recent report from groups in the Break Free From Plastic movement outlined $1.3 billion worth of potential federal initiatives – many involving the EPA – that had a notable focus on reduction, reuse and refill. Another priority is for the federal government to tighten up labeling standards that may lead to consumer confusion.

"Let’s start enforcing the [Federal Trade Commission] guidelines, so brands don’t put recycling logos on products that stand no chance of getting recycled," said Judith Enck, president of Beyond Plastics.

Those working on food waste also see potential to take additional upstream steps. A recent ReFED report found U.S. food waste levels have plateaued since 2016, but did so at a high level. Looking ahead, as the EPA works toward a goal of halving food waste by 2030, some of the most beneficial steps are expected to come from prevention.

While the EPA's voluntary Food Loss and Waste 2030 Champions program recognizes this, ReFED Executive Director Dana Gunders sees value in ramping that up by, at a minimum, cataloging what participating companies are doing. ReFED often hears from companies who say they want to make progress but aren't always sure where to start, so she also sees a role for the federal government to offer more specific guidance.

"Something I would really love to see is some level of incentivization for companies to adopt technologies that are successful in preventing food waste," said Gunders, citing software and other proven tools available at scale that could, for example, be part of a rebate program.

Strengthening systems

Many experts also see value in enhancing measurement of activity in existing materials management systems and finding ways to improve that infrastructure.

Much of the EPA's national waste data is informed by different modeling calculations and not directly sourced from the local level. And while a growing number of states and municipalities have become participants in a voluntary agency measurement standardization effort, the format and detail of available data still varies widely.

This issue gained renewed interest as the EPA began work on a national recycling strategy last year, including a goal to achieve a 50% recycling rate by 2030. Following that announcement, numerous groups commented they support the general ambition but need more detail on measurement plans, as well as potential funding or implementation support.

Measurement also came up in the Break Free From Plastic report, with calls to boost funding so the EPA could "develop and implement new data collection and reporting methodologies to accurately and transparently report waste reduction, recycling, and composting rates throughout the U.S." Various sources believe improving the existing system may be challenging given budgetary limitations at some state agencies, leading some to call for a broader rethink.

"Maybe EPA needs to skip the states and go directly to local governments and private haulers and get higher quality info," said Enck, a former EPA regional administrator. “I think EPA is sophisticated enough to require accurate reporting for local governments and private haulers."

The topic of rethinking measurement strategies also came up in a recent policy blueprint from the brand-backed Recycling Leadership Council (RLC), as one of many action areas for federal legislators.

"If there is a regulatory pathway it would have to be with new laws. There are no existing laws that would be able to put that into place," said Dylan de Thomas, vice president of external affairs at The Recycling Partnership, who was part of the announcement. "Without a bill in place to be able to overhaul that it's going to be challenging."

The EPA recently reopened an opportunity for feedback on how methodologies to measure the 2030 recycling goal, with comments due by March 8.

A wide range of groups also agree the U.S. needs a physical infrastructure refresh. Opinions differ on what recycling solutions to prioritize, but the topic is a common theme in recent policy reports and federal bills. The EPA's options may be limited without additional funding, but it's another area where those in the field see room for new engagement.

This is considered similarly important for organics recycling. According to ReFED's report, a $2.2 billion annual investment in organics recycling infrastructure could help divert 20.9 million tons of food waste from disposal – more than any other category – though it does not rank among the top 10 solutions when it comes to net financial benefit.

"While prevention is certainly the best bang for buck in terms of dollars and climate benefits, if you're looking for just tons of food waste diverted from landfills – which is the goal that the EPA and USDA has set – the recycling solutions still stand at the top," said Gunders, adding this could include more support of state efforts. "There is still a strong role for EPA to play in promoting and ideally helping funnel funding to infrastructure for composting and anaerobic digestion, and codigestion at wastewater treatment plants."

Market development

Unlike the more complex questions around financing and prioritizing new infrastructure, there is near universal agreement the federal government has a greater role to play in advancing market development.

A December report from the Government Accountability Office, spurred by a request from members of Congress, highlighted this as a key area where more could be done under existing authority. The EPA concurred with those findings, noting this topic will be part of its 2030 strategy development.

The report also found the U.S. Department of Commerce may already be obligated, under the Resource Conservation and Recovery Act, to help develop domestic markets in a way that has not been fully realized due to a prior focus on supporting export markets. That idea has been talked about in recycling circles for years, and one longtime proponent thinks this may be its moment.

"I've been trying, within EPA, to see if we can't build a bridge to the Department of Commerce," said Will Sagar, executive director of the Southeast Recycling Development Council, using an example of investments in one state that continue to pay off. "They've had tremendous success in building industry in South Carolina and there's an incredible material demand."

Domestic market development has seen renewed attention recently, due in large part to international trade policy changes by China and others, with multiple states passing laws or taking steps to bolster the concept. And as all signs continue to point toward domestic markets largely being the way of the future for many commodities, stakeholders think this is a key moment for a national approach.

The Break Free From Plastic report calls for funding an Office of Waste Reduction Innovation and Recycling Market Development at Commerce, as just one of multiple examples where groups think the federal government can increase its role.

"Recycling is very much an economic development issue and the federal government has not figured that out yet," said Enck, pointing to a range of tools available to entice development. "Every community generates large quantities of recyclables, keep them local and find companies that can use the material."

Based on the Biden administration's initial pledges around job creation and domestic manufacturing, de Thomas thinks it's safe to assume the topic could gain greater traction than it did in the prior administration. As outlined in the RLC blueprint, among other research, he also sees a greater role for federal agencies to potentially require or incentivize more recycled content using procurement processes.

"They are a huge employer, they are a huge user of resources. Those types of signals can be significant, both at the federal level or the state level," said de Thomas.

The potential benefits of updating procurement standards, something the EPA has been working on, was also a focal point at December's National Zero Waste Conference. Stanislaus likewise agreed "procurement is a big lever" the federal government can employ, with the right life cycle analysis considerations in mind.

For organics, Gunders sees a similarly broad range of procurement or market development possibilities, including examples such as the Department of Defense better managing food waste at its sites and the Department of Transportation prioritizing compost for highway projects. As with many ideas for the Biden administration, she sees one agency having a clear leadership position.

"The EPA could play a more active role in generating and galvanizing support across more agencies in the federal government," said Gunders. "I would love to see the EPA be a champion for this issue across the government and really start to paint some of the opportunities."

New direction

Observers expect it may take months or longer until any notable materials management policy changes emerge under Biden, and daily industry operations are not expected to see major shifts, but they see real potential for fresh ideas. Many waste and recycling trade groups have said they're open to working with EPA leadership, and believe the incoming administrator will be receptive.

Sagar, based in North Carolina where Regan leads the state's environmental agency, said EPA nominee is known to consider "materials management to be important" and is "well respected." He hopes whoever leads OLEM next will bring a similar background, helping capitalize on momentum in Congress and work done under the prior administration.

"The Trump administration was not that detrimental to recycling, they saw that there's an economic impact here," said Sagar, pointing to the America Recycles network launched in 2018, which led to the 2030 goal. "These were significant gains in the last two-and-a-half years. We're not where we need to be yet, but it certainly sets the stage for us to grow and prosper the industry."

When or if Congress decides to take new action will be a key factor in terms of what's possible, said de Thomas. Either way, he's seeing "a real renewal of energy and interest" in what the EPA could do, with some outside the agency even hoping "to see Biden do for solid waste what Obama did for climate."

Coming out of an administration that repeatedly sought to cut the EPA's budget for this work, many see room for career staff and new leadership to take steps regardless of what happens in Congress.

"I always felt that people jumped to legislation without maximizing existing authority," said Stanislaus. He advocated for the EPA to re-engage new or existing agency partners on these issues, while also recognizing "there's probably going to be a need for some legislation" in some cases.

Others are more direct in their calls for legislative or regulatory drivers as the most impactful steps.

"I think the most important thing is new laws and strong regulations and adequate funding to the agency to make sure that the regulations are enforced," said Enck, calling for urgency after the prior administration "wasted four valuable years."

The potential methods to achieve change will vary by material type, with the private sector seen as having a clear role, but the example of food waste may be one of the most emblematic for what some hope the Biden administration could do. Now that awareness has grown, from "being this new hot trend to being a core pillar of any sustainable food program or vision," Gunders said the next step requires more sustained, high-profile attention. One way that could be done is with a national education campaign, as seen in the U.K.

"I don't think we're going to see the numbers fundamentally shift until our culture does. To do that, it's going to take a lot of things but I think one of these big national long-term campaigns is a key component that we're missing right now," said Gunders. "I don't think it's up to the federal government alone. I think they have an anchor and galvanizing role to play."

Emissions

Democrats May Invoke Congressional Review Act to Reverse Recent EPA Rules
https://www.natlawreview.com/article/democrats-may-invoke-congressional-review-act-to-reverse-recent-epa-rules

Wednesday, February 17, 2021

President Biden has pledged to review and reverse many Trump-era environmental policies, including numerous environmental rules. With Democratic majorities in the House and Senate, Congress and the President have the ability to invoke the Congressional Review Act (CRA) to reverse certain of these Trump-era rules.

The CRA is a 1996 statute that establishes a process by which Congress can overturn "major" rules issued by federal agencies. The CRA defines major rules as those that have an annual $100 million or greater effect on the economy. Under the CRA, the newly convened 117th Congress will have a "lookback" period of 60 legislative days from the date a rule was published in the Federal Register to review the rule and vote on a joint resolution of disapproval. A simple majority in both houses of Congress is required for the measure to pass and be sent to the President. If the President then signs the joint resolution of disapproval, the rule cannot take effect, and the issuing agency would need express authority from Congress to promulgate any future rule that is "substantially the same." Notably, no action taken pursuant to the CRA is subject to judicial review.

Some progressives and environmental non-governmental organizations (NGOs) have been critical of the CRA in the past and are reluctant to invoke the CRA to overturn rules promulgated during the Trump administration. Criticisms of the CRA include its procedural shortcuts and an expedited process, which leave little opportunity for congressional deliberation.

According to the George Washington University Regulatory Studies Center, the Environmental Protection Agency (EPA) published over 150 rules in the Federal Register during the last 60 legislative days of the 116th Congress. An executive order released on Jan. 20, 2021, identifies environmental regulations immediately targeted for repeal, suspension, or revision. The following environmental rules identified in the executive order were issued during the last 60 legislative days of the previous Congress:

- EPA: "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration," 85 Fed. Reg. 57398 (Sept. 15, 2020)
  This rule finalizes amendments to the new source performance standards for the oil and natural gas sector, which lifts regulations limiting methane and VOC emissions from the transportation and storage sectors of the oil and gas industry and withdraws regulations limiting methane emissions across the source category. The Biden administration appears to be targeting this rule because of its impacts on the new administration's climate change mitigation strategy.
- EPA: "Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process," 85 Fed. Reg. 84130 (Dec. 23, 2020)
  According to EPA, this procedural rule improves the rulemaking process under the Clean Air Act by establishing requirements to ensure consistent, high-quality analyses of benefits and costs are provided to the public for significant rules.

The list below includes other environmental rules, issued during the last 60 legislative days of the previous Congress, which have generated interest and controversy:

- EPA: "Streamlining Procedures for Permit Appeals," 85 Fed. Reg. 51650 (Aug. 21, 2020)
  EPA promulgated this procedural rule to streamline and modernize EPA's permit appeal process for permits issued under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act.
- EPA: "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review," 85 Fed. Reg. 57018 (Sept. 14, 2020)
  This rule finalizes amendments to the oil and natural gas new source performance standards promulgated in 2012 and 2016.
- EPA: "Steam Electric Reconsideration Rule," 85 Fed. Reg. 64650 (Oct. 13, 2020)
  This rule revises requirements for two specific waste streams produced by steam electric power plants: flue gas desulfurization wastewater and bottom ash transport water.
- EPA: "Environmental Protection Agency Acquisition Regulation (EPAAR): Scientific Integrity," 85 Fed. Reg. 66266 (Oct. 19, 2020)
  This final rule addresses scientific integrity requirements by creating a contract clause for inclusion in solicitations and contracts when the contractor may be required to perform, communicate, or supervise scientific activities or use scientific information to perform advisory and assistance services.
- EPA: "Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act," 85 Fed. Reg. 73854 (Nov. 19, 2020)
  This rule allows a "major source" of hazardous air pollutants to be reclassified as an "area source" after acting to limit emissions.
- EPA: "Review of the Ozone National Ambient Air Quality Standards," 85 Fed. Reg. 87256 (Dec. 31, 2020)
  This rule retains the current national ambient air quality standards, without revision, for photochemical oxidants including ozone.

- EPA: "Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures," 86 Fed. Reg. 2136 (Jan. 11, 2021) This final rule establishes greenhouse gas emission standards that apply to certain new commercial airplanes.
- Army Corps of Engineers: "Reissuance and Modification of Nationwide Permits," 86 FR 2744 (Jan. 13, 2021) This final rule reissues 12 existing Clean Water Act Nationwide Permits (NWPs) and creates four new NWPs.

Energy

Trump's energy plan was vacated and Obama's is outdated. What's next?
https://www.rollcall.com/2021/02/17/trumps-energy-plan-was-vacated-and-obamas-is-outdated-whats-next/

EPA memo said reinstating Obama plan would 'not make sense'

Solar panels near the Indianapolis International Airport. (Tom Williams/CQ Roll Call file photo)
By Benjamin J. Hulac
Posted February 17, 2021 at 10:12am
The Clean Power Plan is dead. Now what?

A month after a federal appeals court in Washington, D.C., vacated the Trump administration's primary regulation on electric power generation, a top air pollution official at EPA said the agency will not reactivate the Clean Power Plan, the Obama-era emissions rule for utilities that Trump's EPA tried to replace.

The acting administrator for EPA's air office, Joseph Goffman, said in a memo Friday that reinstating the Obama-era plan — a pollution rule that set tougher standards than the agency did during the Trump administration — would "not make sense."

That comment came on the heels of testimony from Michael Regan, President Joe Biden's nominee for EPA administrator, who indicated during his confirmation hearing that he would chart a new course to regulate carbon emissions from electricity generation if confirmed.

The EPA has not issued a formal plan to knock down utility-sector pollution, but climate advocates, Biden administration allies and congressional testimony provide clues about what such a plan may and may not entail, and Democrats in Washington have a number of regulatory and legislative options to pursue their goal of net-zero carbon emissions by 2050.

[As oceans rise, Democrats put all hands on deck for climate change]

An agency spokesperson said EPA will "follow the science and law" as it reviews "actions issued under the previous Administration to ensure that they protect public health and the environment, tackle the climate crisis and air pollution, advance environmental justice, restore science, and build back better."

Democrats' first sweeping climate move on deck is a public works bill lawmakers are expected to introduce after Congress finishes work on the $1.9 trillion COVID-19 relief package, while support for carbon capture technology and environmental justice provisions are also gaining political traction.

That public works bill is likely to include low-carbon energy elements, including electric vehicle provisions, environmental justice investments and a national clean energy standard, according to climate advocates like Jamal Raad, co-founder and executive director of Evergreen Action.

Unlike a carbon tax, which would set a cost for carbon emissions from oil, gas, coal and other industrial sources, a national clean energy standard would require utilities to ratchet up the percentage of zero-carbon electricity until reaching 100 percent of the power they distribute.

As of last year, 29 states had clean energy standards, setting their own goals for getting an increasing share of their electricity from low- or zero-carbon sources.

Critically, Sen. Joe Manchin III, D-W.V., who has long opposed a carbon tax, has signaled an openness to a national clean energy standard.

Under Biden, the EPA has not revived the Clean Power Plan despite the recent court ruling, and it does not plan to do so, Goffman wrote in his memo.

"As a practical matter, the reinstatement of the [Clean Power Plan] would not make sense," he wrote. "Ongoing changes in electricity generation mean that the emission reduction goals that the [Clean Power Plan] set for 2030 have already been achieved."

Regan, the nominee for EPA administrator, indicated at his Feb. 3 confirmation hearing that the agency would likely start anew following the January court ruling, which tossed out the Trump-era rule, dubbed the Affordable Clean Energy rule, or ACE.

"The reality is that it presents a significant opportunity for the Environmental Protection Agency to take a clean slate and look at how we best move forward," Regan told Sen. Shelley Moore Capito, R-W.V.

The Environment and Public Works Committee advanced his nomination to the full Senate by a 14-6 vote on Feb. 9.

At the same hearing he told Sen. Sheldon Whitehouse, D-R.I., he had spoken to Jennifer M. Granholm, Biden's pick for Energy secretary, about trapping emissions from heavy industry with "carbon capture" technology.

"There are lots of resources that we can pour in terms of research and development to make sure that carbon capture, sequestration and storage is on the table," Regan said.

Domestic greenhouse gas emissions dropped 10.3 percent in 2020, according to preliminary figures from Rhodium Group.

"That is the single largest drop in annual emissions in the post-World War II era, outpacing the Great Recession of 2009 when emissions dipped 6.3%," the research organization said in a note last month.

Asked on Feb. 9 at an Energy and Commerce hearing about a clean energy standard, Christy Goldfuss, former managing director at the Council on Environmental Quality during the Obama administration, said she supported a clean energy standard and endorsed the idea of significant investment in low-income neighborhoods.

https://www.rollcall.com/2021/02/17/trumps-energy-plan-was-vacated-and-obamas-is-outdated-whats-next/?jwsource=cl

"Congress now has the opportunity to use every tool in its toolbox to tackle climate in the economy, including but not limited to a clean energy standard, a clean energy and sustainability accelerator that targets 40 percent of investments to disadvantaged communities," said Goldfuss, who now works on environmental issues at the Center for American Progress, the left-leaning think tank.

That 40 percent figure is in line with a Senate resolution (S Res 43) Sen. Edward J. Markey, D-Mass., introduced last week as a blueprint for pandemic recovery and a climate-and-employment agenda. Rep. Debbie Dingell, D-Mich., introduced the House version (H Res 104).

Prompted by Rep. Scott Peters, D-Calif., about a federal carbon tax, Goldfuss said a carbon price would omit some pollution sectors and has proven politically untenable.

"I don't think it's appropriate to start with an economy-wide carbon tax," she said. "It does not reach certain sectors like the transportation sector."

Roughly during the changeover between the Obama and Trump administrations, emissions from transportation surpassed electricity emissions to become the No. 1 source of carbon pollution in the U.S.

Forecasters at the Energy Information Administration, a division of the Energy Department, expect transportation emissions to rise through 2050.

Ethan Howland contributed to this report.

Superfund

Missoula County finds EPA work lacking on Smurfit health risk
https://missoulacurrent.com/outdoors/2021/02/missoula-epa-smurfit/

BY LAURA LUNDQUIST FEBRUARY 17, 2021

On Tuesday, representatives of several groups interested in the Smurfit-Stone mill site cleanup compared the main doubts they have with the EPA's draft Human Health Risk Assessment report. (Laura Lundquist/Missoula Current file photo)
Organizations within Missoula County are not impressed with what the U.S. Environmental Protection Agency has done to assess the extent of the pollution at the Smurfit-Stone mill site. But they're not sure they have many options.

On Tuesday, representatives of several groups interested in the Smurfit-Stone mill site cleanup compared the main doubts they have with the EPA's draft Human Health Risk Assessment report. Basically, they're the same problems the groups raised in past assessments, particularly in 2018, said Missoula County Water Quality District supervisor Travis Ross.

"These risk assessments, if they're not properly carried out, then the failure to identify the risk affects the trajectory of the entire Superfund process. So it's imperative that we get this close to right, close to perfect," Ross said.

The Water Quality District has three main problems with the assessment, all related to insufficient sampling.

First, the EPA sampled the site using a grid analysis: lay a grid over the site and take samples of each box in the grid. But then, the EPA combined all the samples together. Normally, that isn't a problem if the contamination is relatively uniform. But the Smurfit site has settling ponds and other dumpsites that result in "hot spots" of chemicals.

The details of those hot spots are lost when all the samples are combined into one composite sample. That can be a problem in the future if a worker or resident digs into the wrong area.

Missoula County Health Specialist Todd Seib said the conceptual site model – a model of where the mill deposited the toxins and where they might migrate to – was problematic to begin with. That led the EPA to sample in some of the wrong places or not at all.

EPA hasn't taken any soil samples since 2017, particularly in the 140 acres of sludge ponds. The ponds have been capped with clean fill but that doesn't stop someone like a construction worker from digging there in the future.

"So they've taken a few samples – it's like less than 30 samples in 140 acres," Seib said. "It's not many samples because they don't see the risk of this material eroding away and washing downstream and affecting other ecological receptors or other humans. They don't sample because they don't see it as a risk."

The next thing the Water Quality District will comment on is the remedial investigation not characterizing the extent of the dumps.

The last problem with the risk assessment is insufficient sampling of fish in the Clark Fork River, Ross said. The EPA is prioritizing information only from fish collected in 2019, but that looked at only a few Northern pike and rainbow trout in certain locations and only for a relatively short distance downstream.

The state of Montana has used that data to issue consumption warnings telling people not to eat pike or rainbow trout due to levels of PCBs. But notably, PCB levels were highest at the farthest point downstream at St. Regis.

The EPA claims it doesn't need to do any more because levels of dioxins and PCBs measured in the fish upstream are high too. That's supposed to represent the background levels of the chemicals – the amount that's there before the stream hits the mill site. Part of that is because of other mill sites adding pollution, including one at Darby and the Stimson mill site at Bonner.

But Ross said the EPA has ignored how toxins from Smurfit have traveled through the air. So the Smurfit site could still have caused the high toxin levels measured in fish upstream.

"It's in there – but it doesn't in detail talk about aerial deposition and how that can affect the understanding of background," Ross said. "For those of you who have been in Missoula for a long time and smelled the effects of the mill and know that the extent of those aerial depositions was large. So identifying an area that wasn't impacted is difficult and certainly important as we understand its contribution to the valley."

The Water Quality district is disappointed that the EPA is not looking at the danger posed by the Clark Fork River if it were to flood and move into the more polluted regions of the site. The 2018 flood provided a hint of what might happen as the river rose high, pounding the earthen berm surrounding the site. Add to that the fact that no maintenance work has been done on the berm since the flood, Ross said.

Ross reminded the group of the ice jams scouring the riverbanks above the Milltown Dam in the winter of 1996.

"The risk of the Clark Fork reoccupying its historic channels on site is not being evaluated," Ross said. "I think the official response from EPA is it's a risk that's difficult to calculate if and when it will happen. So they're not addressing it. But we know catastrophic failures are a real thing."

Mary Price of the Confederated Salish and Kootenai Tribes found an EPA policy that required the agency to look at health effects in younger children age 0 to 6. But the EPA hasn't done that in its health risk assessment, Price said.

Missoula County Commissioner Josh Slotnik asked if something could be done to get some action since everyone was so disappointed in the EPA's progress.

Ross said several years ago, the county discussed a Clean Water Act lawsuit, which may still be an option. Another option is zoning the area, setting limitations unless the area is cleaned to a desired level.

“But we are down the Superfund path now, and we want to know and understand the risks,” Ross said. “So much of it is uncomfortable because we don’t know where the risk assessments are going to lead. We know we do need to think about other tools. But what those are and when to use them are really hard questions.”

The county, tribes and nonprofit organizations have until Friday to submit to the EPA their comments criticizing the Human Health Risk Assessment.

Waste Cleanup

EPA awards $220M contracts for uranium mine cleanup
https://news.yahoo.com/epa-awards-220m-contracts-uranium-150500650.html

Theresa Davis, Albuquerque Journal, N.M.
Wed, February 17, 2021, 10:05 AM
Feb. 17—The U.S. nuclear weapons program during the Cold War required a steady supply of uranium. But, after 30 million tons of the metal were extracted from Navajo lands, about 500 mine sites were left behind.

Now, the U.S. Environmental Protection Agency has awarded contracts worth $220 million to three companies to clean up 50 abandoned uranium mine sites near Grants and on the Navajo Nation.

The EPA announced last week that it has awarded contracts to Red Rock Remediation Joint Venture, Environmental Quality Management Inc. and Arrowhead Contracting Inc.

An EPA document outlining the project said the contractors will remove "immediate contamination risks," and work with federal and tribal agencies to find permanent solutions.

"Structures and water sources in the area contain elevated levels of uranium, radium and other radionuclides," the document reads. "Few of the legacy uranium mine sites have undergone surface reclamation, and many have physical hazards that remain, such as open adits and shafts, as well as uncontrolled waste rock and ore piles on-site."

Arrowhead and Environmental Quality Management are Native-owned businesses. The companies will create workforce training programs for Navajo residents as part of the projects.

Training could include construction and education about uranium contamination.

The EPA has also supplied the contractors with an extensive list of Indigenous businesses that can contribute to the cleanup. The contract money comes from a $1 billion settlement reached in 2015 with Kerr McGee Corp. and Tronox.

The Navajo Nation Environmental Protection Agency helped develop the contracts. Valinda Shirley, executive director of the Navajo EPA, said they represent important progress in restoring Navajo lands.

"We are very pleased that Native American-owned firms are being considered and selected for the remediation of uranium mine sites," Shirley said in a statement. "The award of these contracts propels the cleanup of our priority mine sites across the Navajo Nation."

Shirley has worked on Navajo EPA cleanup of Tronox mines in Arizona and the Church Rock Mine north of Gallup. A 1979 disaster at that uranium mill sent 93 million gallons of radioactive waste into the Puerco River.

University of New Mexico research has linked Navajo and pueblo patients' prolonged exposure to heavy metals to immune deficiencies, as well as higher likelihoods of hypertension, diabetes, some cancers, kidney disease and cardiovascular disease.

UNM's latest Navajo Birth Cohort study showed that 25% to 35% of adult Navajo participants had uranium in their urine at concentrations higher than 95% of the U.S. population.

Site assessments are expected to begin later this year.

Waste Cleanup
50 abandoned uranium mines + a mess = $220M from EPA
https://indiancountrytoday.com/news/50-abandoned-uranium-mines-a-mess-220m-from-epa-PoR2XsMLBUSBPaMFz2qwzg

Klee Benally of the Navajo Nation at a 2016 protest outside the Environmental Protection Agency in Washington, demanding cleanup of abandoned uranium mines. Even though mining stopped decades ago – and was banned by the tribe in 2005 – the fight to clean up the toxic sites has lingered.

The U.S. Environmental Protection Agency announced three contract awards for the clean-up of more than 50 abandoned uranium mine sites on the Navajo Nation
Haleigh Kochanski

WASHINGTON – The Environmental Protection Agency said Thursday it will award contracts worth up to $220 million to three companies for the cleanup of some of the hundreds of abandoned uranium mines on the Navajo Nation.

Work could start later this year following the completion of assessments for mining sites coordinated between the EPA and the Navajo Nation's environmental agency, the federal agency said.

This week's announcement is just the latest in years of efforts to clean up the mines, the toxic legacy of Cold War mining in the region. More than 30 million tons of uranium ore were mined in the region, according to the EPA, which said more than 500 mines were ultimately abandoned.

"From World War II until the end of the Cold War, millions of tons of uranium were mined on Navajo lands, exposing mine workers and their families to deadly radiation," said Rep. Tom O'Halleran, D-Arizona, whose district includes the Arizona portion of the Navajo Nation.

"As a result, high rates of cancer, birth defects, and contaminated water sources remain a reality for residents of the Navajo Nation even now," O'Halleran said in a statement on the contracts.

Navajo Nation President Jonathan Nez released a statement following the announcement.

"The Navajo people have endured decades of radiation exposure and contamination caused by uranium mining and production that has taken the lives of many former miners and downwinders and continues to impact the health of our

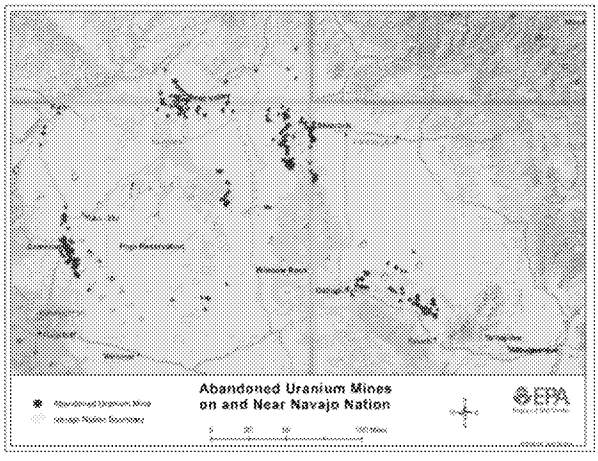
children," Nez said. "We appreciate the U.S. EPA's efforts to create incentives and opportunities for Navajo Nation residents by working with the contracted companies to develop training programs for our people and businesses to promote professional growth related to abandoned mine clean-ups."

The tribe said the cleanup sites are in New Mexico's Grants Mining District and in 10 chapters located on the Navajo Nation, which was the primary focus of uranium extraction and production activities for several decades beginning in the 1950's.

The Navajo Area Abandoned Mine Remedial Construction and Services Contracts were awarded to contractors that are classified as small businesses, two of which are owned by Native Americans, the EPA said. Contracts were awarded to the Red Rock Remediation Joint Venture, Environmental Quality Management Inc. and Arrowhead Contracting Inc.

Terms of the contracts require the companies to develop training programs "for Navajo individuals and businesses to promote professional growth" in areas related to the cleanup work. The companies have also partnered with local businesses on the project, the EPA said.

A 2016 Environmental Protection Agency map showing some of the hundreds of abandoned mines in and around the Navajo Nation. Tribal and federal officials have been working for years on cleanup plans for the mines. (Map courtesy the EPA)



The agency said it worked closely with Navajo Nation to develop contracts that would incentivize the creation of employment opportunities for Navajo residents in order to build local economic and institutional capacity.

The majority of funding for the contracts comes from a nearly $1 billion settlement made in 2015 with Kerr McGee Corp. for the cleanup of more than 50 mines in Nevada and on the Navajo Nation that the company and its successor, tronox, were responsible for.

From the late 1940s through the 1960s, Kerr-McGee mined more than 7 million tons of ore on or near the Navajo Nation, leaving behind uranium mine sites that included contaminated waste rock piles. Exposure to uranium in soil, dust, air, and groundwater, as well as through rock piles and structural materials used for building can pose risks to human health, according to the EPA.

Mining stopped for the most part decades ago, and the Navajo Nation banned uranium mining on its lands in 2005. But the cleanup effort has lingered. The EPA launched five-year programs in 2007 and 2014 to study the issue and identify the biggest risks, and the agency last year added abandoned Navajo uranium mines to its list of Superfund sites "targeted for immediate, intense action."

Representatives of Indigenous environmental groups did not respond to requests for comment and an official with the Grand Canyon chapter of the Sierra Club said she was not familiar enough with the contracts to comment – but did express concerns that there is no federal standard for what mine cleanup entails.

A regional EPA official said that the "contract awards mark a significant step in this ongoing work."

"EPA continues to work with the Navajo Nation EPA and local communities to address the legacy of abandoned uranium mines," said Deborah Jordan, acting regional administrator for the EPA's Pacific Southwest office, in Thursday's statement.

O'Halleran welcomed the announcement.

"I am glad to see my oversight efforts have pushed the EPA to make these critical investments," he said in a statement Friday.

Water

Senate Intel leader demands answers on Florida water treatment center breach
https://thehill.com/policy/cybersecurity/539200-senate-intel-leader-demands-answers-on-florida-water-treatment-center

BY MAGGIE MILLER - 02/17/21 11:34 AM EST 0

Senate Intelligence Committee Chairman Mark Warner (D-Va.) on Wednesday demanded answers around the investigation into the recent attempt by a hacker to breach and poison the water supply in a Florida city.

Warner sent a letter to the FBI and the Environmental Protection Agency (EPA) asking for an update on their investigation into the breach of Oldsmar, Fla.,'s water treatment facility, which officials announced earlier this month.

A hacker successfully breached a system network and attempted to increase the level of sodium hydroxide, also known as lye, in the water to dangerous levels. The lye is used to control water acidity levels and remove metals, but is used in other settings as a liquid drain cleaner.

The hacking effort was not successful, with an employee immediately correcting the level of sodium hydroxide to normal levels, and the 15,000 residents of Oldsmar were never in danger. Following the incident, the FBI and other state and federal agencies opened an investigation.

Warner pointed to the dangerous hacking incident as having wider implications beyond Florida.

"While the Oldsmar water treatment facility incident was detected with sufficient time to mitigate serious risks to the citizens of Oldsmar, and appears to have been identified as the result of a diligent employee monitoring this facility's operations, future compromises of this nature may not be detected in time," Warner wrote to the agencies.

Warner asked that the FBI update him on its investigation, that the EPA provide answers on whether the Oldsmar water treatment facility was up to date with federal security plans for the water and wastewater sector, and whether the federal government is sharing security intelligence with critical infrastructure providers so they can defend themselves.

"The Federal Government must ensure we are taking all precautions to keep drinking water safe for Americans," Warner wrote.

The FBI, EPA, the Cybersecurity and Infrastructure Security Agency (CISA) and the Multi-State Information Sharing and Analysis Center (MS-ISAC) put out an alert last week addressing the incident, warning critical infrastructure operators against using desktop sharing software that may create more cyber vulnerabilities.

Message

From: E&E News [ealerts@eenews.net]
Sent: 3/16/2021 11:33:55 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 16 -- Energywire is ready

Energywire -- The Transformation of the Energy Sector

Read today's Energywire on the web

ENERGYWIRE

AN E&E NEWS PUBLICATION

ENERGYWIRE — Tue., March 16, 2021

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Renewable industries are championing record-setting growth, but at least one analysis suggests that many of their employees are still out of a job, underscoring the head winds facing the Biden administration's clean energy ambitions.

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8. OIL AND GAS:

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VW plans 6 battery factories in Europe to ramp up electrics

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From: E&E News [ealerts@eenews.net]
Sent: 2/26/2021 9:19:34 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: February 26 -- E&E News PM is ready

E&E News PM -- Late-Breaking News

Read today's E&E News PM on the web

E&E NEWS PM

AN E&E NEWS PUBLICATION

E&E NEWS PM — Fri., February 26, 2021

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House Democrats pass sweeping public lands package

House Democrats earlier today approved a massive public lands bill — a repudiation of the Trump administration's efforts of the last four years to expand drilling and extraction activities, restrict new federal land designations, and gut environmental equity initiatives.

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2. ENERGY POLICY:

White House calls for grid spending as Biden visits Texas

3. CLIMATE:

'Shooting a gnat with a bazooka': Ex-CEQ lawyer on NEPA move

4. CLIMATE:

Greens press Biden for swift action on tailpipe standards

UPCOMING HEARINGS AND MARKUPS

5. CALENDAR:

Activity for February 22 - February 28, 2021

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From: Kibilov, Nicholas [Kibilov.Nicholas@epa.gov]
Sent: 2/3/2021 10:18:14 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Media Clips: Afternoon Edition, 2/3/21

Daily Media Clips: February 3, 2021 (afternoon edition)
Air
JDSupra: D.C. Circuit Vacates Portions of EPA's 2018 Ozone Implementation Rule
Biofuels
DRG News: Growth Energy Battles in Court to Reverse Demand Destruction
Climate
The Fence Post: Senators urge Vilsack to solve old problems
COVID-19
The National Law Review: EPA Announces Approval of Extensions to August 24, 2020, First-Ever Long-Lasting Antiviral Product for Use against COVID-19
Enforcement
JDSupra: Is Your Insurance Program Ready for the Biden Administration?
Environmental Justice
The National Law Review: How Will President Biden's Elevation of Environmental Justice Within the EPA Affect Your Permitted Facility or Redevelopment Project?

D.C. Circuit Vacates Portions of EPA's 2018 Ozone Implementation Rule
https://www.jdsupra.com/legalnews/d-c-circuit-vacates-portions-of-epa-s-4396375/
WRITTEN BY: Brownstein Hyatt Farber Schreck, Benjamin Saver, Eric Waeckerlin
3 Feb 2021

On Friday Jan. 29, 2021, the United States Court of Appeals for the D.C. Circuit in Sierra Club v. EPA, Case No. 15-1465, struck down several provisions in EPA's 2018 rule implementing the 2008 National Ambient Air Quality Standards (NAAQS) for ozone (the 2018 Implementation Rule) under the Clean Air Act (CAA). The court vacated three provisions of this rule, including (1) the ozone precursor interpollutant trading program; (2) an option for states to demonstrate reasonable further progress of NAAQS attainment through compliance with control measure requirements, rather than models based on actual emissions data; and (3) a provision allowing states to include already implemented measures as contingency measures in their state implementation plans (SIP). The court's opinion vacating these three provisions has important implications for Colorado as it continues to confront ozone nonattainment along the Front Range.

The Ozone Precursor Interpollutant Trading Program
The CAA requires new and modified major sources of ozone precursors, i.e., volatile organic compounds (VOCs) and nitrogen oxides (NOx), in ozone nonattainment areas to obtain offsets for those emissions from the same or other sources in the same nonattainment area prior to construction or modification.

In the 2018 Implementation Rule, the Environmental Protection Agency (EPA) interpreted the CAA to allow operators to obtain offsets for VOC emissions through reductions in NOx and vice versa. The court held that EPA's interpretation violates the plain language of the CAA stating the ratio of total emission reductions of VOCs (or NOx) to total increased emissions of "such air pollutant" shall be in certain amounts. The court reasoned that the phrase "such air pollutant" refers back to VOCs or NOx (depending on the statutory section),

not ozone, and that had Congress intended to allow ozone precursor interpollutant trading, it would have used the phrase "ozone precursor" instead of "such air pollutant" as it had done elsewhere in the statute.

Demonstrating Reasonable Further Progress
Under the CAA, SIPs for nonattainment areas must require reasonable further progress in meeting the NAAQS. SIPs for ozone nonattainment areas classified as moderate or above must provide for reductions of VOC emissions by at least 15% from baseline emissions, defined as the total amount of actual VOC or NOx emissions from all anthropogenic sources in the area during the baseline year, originally 1990. Beginning six years after the baseline year, and every three years thereafter, states must determine whether each serious or above ozone nonattainment area has achieved certain emission reduction milestones.

The 2018 Implementation Rule allows states to demonstrate compliance with this requirement in one of two ways: (1) through actual emissions reductions as demonstrated through emissions inventory data; or (2) through compliance with control measures in the relevant reasonable further progress plan (RFP). The court acknowledged the CAA gives EPA some discretion, but held EPA's interpretation regarding compliance using control measures in the RFP to be an abuse of this discretion.

Contingency Measures
The CAA requires that SIPs include specific measures to be undertaken if the nonattainment area fails to make reasonable further progress to attain the NAAQS. If reasonable further progress is not made, these contingency measures take effect without further action.

The 2018 Implementation Rule allows approval of already implemented measures as contingency measures so long as the state does not rely on them for reasonable further progress or attainment demonstration. The court found this provision to be contrary to the plain language of the CAA, which requires contingency measures to become operative on a prospective basis only (i.e., "to be undertaken if").

The Implications
This decision is an important inflection point for Colorado's ozone planning efforts, and carries important consequences for regulated entities with operations in the Denver Metro/North Front Range 2008 serious ozone nonattainment area, which is likely to be reclassified to severe nonattainment status. For example, operators of new or modified major sources of ozone precursors will have fewer options when seeking required emissions offsets due to the prohibition on interpollutant trading. Moreover, states may be required to add additional contingency measures to their SIPs that would further reduce emissions in the event that reasonable further progress or attainment of the NAAQS is not made. In fact, several parties raised this issue in the recent December 2020 ozone SIP rulemaking, and this case could require the state to revise that plan. And the portion of the ruling requiring inventory data to show reasonable further progress arguably makes attainment demonstrations more difficult and certainly calls into question the importance and accuracy of emissions inventories. In short, this is a significant ruling for the state of Colorado as it continues to confront its persistent ozone issues, and carries important consequences for both state air quality planning agencies and regulated sources operating in existing and emerging ozone nonattainment areas.

Growth Energy Battles in Court to Reverse Demand Destruction
https://drgnews.com/2021/02/03/growth-energy-battles-in-court-to-reverse-demand-destruction/
Pierre, SD, USA / DRGNews
Jody Heemstra
Feb 3, 2021 2:27 PM

Biofuel groups last week filed a court brief challenging the Environmental Protection Agency's failure to properly establish 2020 biofuel blending targets under the Renewable Fuel Standard. In their brief, the parties seek to ensure that the annual biofuel targets, or Renewable Volume Obligations, account for small refinery exemptions the agency issued for past years. EPA's current regulations factor in only future SREs, while ignoring biofuel demand destroyed by past SREs granted retroactively, totaling more than four billion gallons in recent years. Growth Energy CEO Emily Skor stated, "The Trump EPA's 2020 biofuel targets failed to account for the billions of gallons of demand lost to the agency's mismanagement of the Renewable Fuel Standard." Growth Energy and others also challenge EPA's abuse of its waiver authority for cellulosic biofuel targets. Under the 2020 RVOs, the agency set cellulosic targets that did not account for 50 million credits carried over from past years. As a result, cellulosic targets were set at 590 million gallons.

Senators urge Vilsack to solve old problems
https://www.thefencepost.com/news/senators-urge-vilsack-to-solve-old-problems/
By Jerry Hagstrom
The Hagstrom Report

The Senate Agriculture Committee on Tuesday voted unanimously to approve President Biden's nomination of Tom Vilsack to be Agriculture secretary, but only after several members urged him to address the same problems that he faced and found difficult to solve when he was agriculture secretary in the Obama administration.

The hearing was odd in that Sen. John Boozman, R-Ark., gaveled the members to order but noted that the committee did not have a chair because Sen. Pat Roberts, R-Kan., had retired and the Senate has not yet passed an organizing resolution that will make Sen. Debbie Stabenow, D-Mich., the chair and Boozman the ranking member. The Senate is composed of 50 Democrats and 50 Republicans, but Vice President Harris has the 51st vote, putting the Democrats in charge.

Vilsack testified virtually from his home in Iowa, but Boozman noted that Vilsack has agreed to return to testify before the committee in person four to six weeks after he assumes his position.

After the committee vote was held Tuesday afternoon off the Senate floor, Stabenow and Boozman both said they will urge Senate leaders to hold the floor vote as soon as possible.

EPA NOTED
In an opening statement, Boozman noted that the ag economy had been good in the early Obama years but later went downhill. Boozman urged Vilsack to have an influence at the Environmental Protection Agency, which writes a lot of regulations that affect farmers, and also to focus on supply chain and trade issues.

Stabenow said she had good memories of working with Vilsack in the Obama years, but said, "The COVID-19 pandemic changed the world before our very eyes. Many essential food workers were on the front lines without adequate protection. Farmers had no choice but to destroy the crops they could no longer sell. Millions of families still don't have enough food to eat, and food banks are overwhelmed with unprecedented demand."

Sen. Chuck Grassley, R-Iowa, introduced Vilsack, saying it was "quite an honor to introduce a fellow who was governor" and that "I can't think of a single quarrel I've had with Secretary Vilsack."

Vilsack submitted written testimony but did not stick to it in his remarks.

Vilsack said that he had to recognize it is a different time, that he is "a different person" and that "it is a different department."

Noting that the late Sen. Robert Kennedy, D-N.Y., used to say that some people look at things as they are and ask why and others dream and ask why not, Vilsack said that the country is faced with a series of "why not opportunities" in agriculture, in the food industry and in rural America.

OPPORTUNITIES

Vilsack said that, while addressing the coronavirus pandemic with food assistance, relief for farmers and making sure essential workers on the line and in the farm fields are protected and recognized as essential workers, he sees four longer-term "why not opportunities":

- Climate change, including creating new markets, improving soil health and protecting forests.
- Food security and nutrition insecurity that leads to obesity.
- Openness and competitiveness of markets that can be addressed by new rules and laws and more food-processing facilities.
- Fully, deeply and completely addressing unfair practices and discrimination in USDA programs.

When Stabenow asked how the nation can, after the Trump years, the trade conflicts and COVID-19, "return to a sense of normalcy with a focus on responsible risk management," Vilsack said "that is a complicated question" but that he would do his best, including developing new markets in southeast Asia and over time in Africa as well as growing domestic markets by making it easier for farmers to sell locally and negotiate prices and sell to schools.

Farmers are interested in addressing climate change if the programs are voluntary and market-based, he said.

Sen. Cindy Hyde-Smith, R-Miss., urged him to improve markets for timber and investigate what has happened with a petition for fertilizer tariffs that has led to a 25% increase in prices.

BIOFUELS

Responding to the concerns of Sens. Joni Ernst, R-Iowa, Amy Klobuchar, D-Minn., and others about biofuels, Vilsack said he would continue to make the point within the Biden administration that the biofuels industry has made great environmental strides and provides environmental benefits.

He said he will also make the point to EPA that small refinery exemptions to the Renewable Fuel Standard were intended for small refineries and that waivers should be "very, very infrequent."

On concerns about the Biden administration's encouragement of electric vehicles, Vilsack said he makes the point that he has an old Ford Focus and that a lot of other people have conventional cars that could use renewable fuels with environmental benefits.

To Boozman and Sen. John Hoeven, R-N.D., who had concerns about the Biden administration's decision to pause payments under the Coronavirus Food Assistance Program, Vilsack said that was an action that would have been taken by any new administration and is "not designed for anything but to get a better sense of that program."

Hoeven also said that any carbon sequestration bank should be farmer-friendly, and Vilsack said that farmers should be the primary beneficiaries of such a bank.

Hoeven and Sen. John Thune, R-S.D., both said that more needs to be done for livestock producers in terms of price, and Vilsack said that laws on price discovery should be strengthened. He also told Hoeven, Thune and Sen. Deb Fischer, R-Neb., that he would entertain any ideas to make sure consumers know what meat is American in a way that does not get the United States into trouble with the World Trade Organization, as the previous country-of-origin-labeling program did. He also told Sen. Mike Braun, R-Ind., that he would consider

"reinvigorating" the task force established by the Justice Department in the Obama administration to look at agricultural market concentration and perhaps involve other agencies.

Responding to Sen. Michael Bennet, D-Colo., Vilsack said he believes forest maintenance should be included in infrastructure discussions along with roads and bridges.

Vilsack told Sen. Sherrod Brown, D-Ohio, that he believes participation in the Special Nutrition Program for Women, Infants and Children can be increased through a campaign to make people more aware of the program.

Sen. Patrick Leahy, D-Vt., complained that the Farmers to Families Food Box program hadn't worked because the food arrived late and wasn't local. Vilsack said he believes the program could be improved to encourage local agriculture.

At Grassley's request, Vilsack promised to take another look at the definition of "actively engaged" farmers that the Trump administration put forward.

Vilsack told Sen. Bob Casey, D-Pa., that for ecosystem markets to work there has to be quantification.

He told Fischer that proving American foods are produced sustainably is a new case to make in international markets. If the United States can achieve Biden's vision of an agriculture system with zero emissions by 2050, that will "provide a market advantage" in selling products overseas.

But to achieve zero emissions, innovation will be necessary and much of it can come from land grants schools, which are a "gift" from the era of Abraham Lincoln.

He told Sen. Tina Smith, D-Minn., that to improve credit programs for rural minorities it will be necessary to identify the barriers.

Sen. Kirsten Gillibrand, D-N.Y., urged Vilsack to reform dairy pricing. Farmers should get more benefit from the value of dairy exports, said Vilsack, who has been the CEO of the U.S. Dairy Export Council. Gillibrand responded that the regional cost of production needs to be taken into consideration.

Governors, Vilsack said, "need to be engaged personally" in the administration of nutrition programs.

EPA Announces Approval of Extensions to August 24, 2020, First-Ever Long-Lasting Antiviral Product for Use against COVID-19
https://www.natlawreview.com/article/epa-announces-approval-extensions-to-august-24-2020-first-ever-long-lasting
ARTICLE BY Lisa M. Campbell, Heather F. Collins
Wednesday, February 3, 2021

On January 19, 2021, the U.S. Environmental Protection Agency (EPA) announced the issuance of a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 18 emergency exemption to the states of Oklahoma and Arkansas, permitting American Airlines to use SurfaceWise2, believed to inactivate coronaviruses like the SARS-CoV-2 virus on surfaces, in specific airport facilities and planes. EPA also has revised the terms of use for SurfaceWise2 for all current emergency exemptions.

EPA's initial emergency exemption for the state of Texas issued on August 24, 2020, specified that the product remained effective for seven days. According to its updated labels for all three states, EPA has now approved claims that SurfaceWise2 provides residual surface control of the coronavirus SARS-CoV-2 on surfaces that are

undisturbed for up to 30 days. The updated labels state "When used in accordance with the directions for use, SurfaceWise®2 provides residual surface control of coronaviruses, including SARS-CoV-2, for up to 30-days on undisturbed (e.g., are not routinely disinfected with List N products) non-porous treated surfaces."

Of note, EPA also states in its announcement that SurfaceWise2 should be reapplied every time surfaces are disinfected to ensure continuous product performance as exposure to prolonged wetness may adversely impact the efficacy of the product. The updated labels state in the Directions for Use that the user must "Reapply SurfaceWise®2 after surfaces are disinfected to ensure continuous product performance" and "Do not expose SurfaceWise®2 to prolonged wetness as this may adversely impact the efficacy of the product."

FIFRA Section 18 authorizes EPA to exempt federal or state agencies from any provision of FIFRA in the event that emergency conditions require such an exemption. EPA regulations (40 C.F.R. Part 166) specify when state or federal government agencies will be permitted to use unregistered pesticides in response to an emergency. EPA's regulations provide that an emergency exists when:
• There is an "urgent, non-routine" situation requiring the use of a pesticide to control a new pest not previously prevalent in the United States, to control significant risks to health, the environment, beneficial organisms, or endangered species, or to prevent specified types of economic loss; and
• There is no registered pesticide or economically or environmentally feasible alternate method of control available.
40 C.F.R. § 166.3.

The exemptions granted can be very specific and time-limited; EPA has developed a database so companies can search (by chemical, site, pest, applicant, or date range) to determine if an emergency exemption has been issued and its expiration date.

In this case, EPA approved the Section 18 emergency exemption request for SurfaceWise2 -- a product manufactured by Allied BioScience. SurfaceWise2 is a surface coating that Allied BioScience states inactivates viruses and bacteria within two hours of application and continues to work against them for up to 30 days, on undisturbed non-porous treated surfaces. EPA's approvals will allow Texas, Oklahoma, and Arkansas to permit American Airlines airport facilities and planes at specific locations identified on the label and two Total Orthopedics Sports & Spine Clinics in Texas to use SurfaceWise2 under certain conditions. The approved Section 18 emergency requests are effective for one year. This public health exemption will expire August 24, 2021. As new data emerge, EPA may alter the terms of the product's emergency uses, as it did with the modifications discussed here.

Additional information on Section 18 emergency exemption requests and SARS-CoV-2 is available here

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Is Your Insurance Program Ready for the Biden Administration?
https://www.jdsupra.com/legalnews/is-your-insurance-program-ready-for-the-7472988/
By Pillsbury - Policyholder Pulse blog, Aaron Coombs, & Matthew Jeweler
3 Feb 2021

The Biden administration has hit the ground running with executive orders, regulatory and legislative priorities, and cabinet-level and other top posts being announced on a daily basis. Our public policy colleagues have been closely tracking many of the policy priorities of the new administration and highlighting important regulatory and legislative developments that businesses can expect coming down the pipeline.

As with any change in administration (particularly one involving a change in political party), the new administration's policy priorities have the potential to impact your company, and consequently implicate your company's insurance, in different ways than experienced during the previous administration. This is a good

time to take a hard look at your company's risk profile and insurance portfolio and consider whether you have the right coverage in place. Below we highlight some of the Biden administration policy priorities that may have insurance implications and steps you can take to maximize the protection your insurance policies can provide.

Securities Regulation and Enforcement
A Democrat-led Securities and Exchange Commission (SEC) is expected to ramp up enforcement of traditional Wall Street misconduct and aggressively lobby Congress to allocate additional funding to the Commission's enforcement function. Directors and Officers (D&O) liability insurance often protects against investigations or claims brought by the SEC against companies or their directors or officers for alleged violations of securities laws and regulations. The D&O insurance market, however, is hardening, with one broker reporting that 100% of underwriters expect premiums to go up in 2021. Corporate risk managers trying to stay on-budget should make sure they fully understand the tradeoffs of any changes in their D&O insurance program to make sure their company remains adequately protected.

Environmental Enforcement
Given the new administration's early actions including entering the Paris Climate Accord, to halting the Keystone XL pipeline, and banning new oil and gas extraction from federal public lands, it should come as little surprise that in the new administration the Environmental Protection Agency (EPA) is expected to take more aggressive steps to investigate pollution and take action against companies that are believed to have caused environmental damage. This could mean an increase in federal enforcement actions as well as resulting disputes among potentially responsible parties (PRPs). As one example, the new administration has made clear its intent to focus on climate-related issues, including fossil fuels. Heightened scrutiny on coal ash and per- and polyfluoroalkyl substances (PFAS) can also be expected. Environmental/pollution insurance—often referred to as Environmental Impairment Liability or Pollution Legal Liability policies—can help protect your company against liability arising because of a new pollution event or the discovery of historical pollution conditions, including EPA enforcement actions. Historic occurrence-based liability insurance policies may apply as well. It is highly likely that federal environmental regulators in the new administration will be more active and aggressive than in the last administration, so depending on your company's environmental risk profile you should consider if your environmental liability insurance is sufficient.

COVID-19
While the Biden administration is taking a number of new steps to combat the global pandemic, the impacts of COVID-19 will be long lasting. With a new Democrat-controlled Congress, the likelihood of federal-level liability protection from COVID-19 lawsuits remains slim. COVID-19-related risks will continue to implicate many different types of insurance—from property insurance for impacted facilities and related business interruptions, to general liability claims for alleged exposures, to employment practices claims, to potential D&O claims for alleged failures by directors and officers to manage the business through the pandemic, companies will need to be on the look-out for insurers trying to add new COVID-19 or pandemic exclusions to all different types of policies and pushing back where appropriate.

Cyber Risks
Although too early to tell, it is likely we will see increased Federal Trade Commission (FTC) enforcement in the cyber and privacy areas. The new administration is looking to increase consumer protection efforts across the board, and that likely will include data privacy issues. Cyberinsurance policies are a key tool in any company's arsenal against ever evolving cyberthreats, and that often includes potential coverage for regulatory investigations and proceedings. As insurance companies are constantly updating their policy forms to address each new emerging cyber risk, companies should be reviewing their cyberinsurance policies annually to ensure they are receiving market-leading protection.

False Claims Act

The False Claims Act (FCA) imposes liability on those who knowingly submit false claims for payment to the government or who act improperly to avoid paying the government. Many FCA cases involve claims relating to government-funded health care or defense contracting. A liable party faces potential treble damages and penalties. In addition to suits by the United States directly, many FCA suits are brought by whistleblowers on behalf of the United States, and the United States may intervene in such cases. It is possible we will see an uptick in whistleblower cases given the presumption that the new administration will be more open to pursuing FCA cases. FCA cases potentially implicate D&O insurance and other types of insurance, depending on the specific circumstances. If your company is involved in government contracting or government-related health care, you will want to review your policies for potential FCA liability coverage.

Employment Practices Liability
The change to a Democratic administration may result in increased employment-related enforcement by the Equal Employment Opportunity Commission (EEOC). It is expected the new administration will move in a more employee-friendly direction, and we could see increased enforcement in areas like discrimination, workplace harassment, wrongful termination, and equal pay. These types of claims may be covered under your company's employment practices liability insurance, and that coverage will be even more important if the federal government is more active in employment-related enforcement.
* * *

In sum, if the new administration imposes stricter regulations and increases enforcement efforts as expected, that may mean the potential for greater liabilities for your company. And greater liabilities heighten the importance of your company's insurance program. Now is the time to think hard about your company's risk and insurance profiles and consider if changes need to be made to account for the potential changes in the legal landscape that may be coming under the new administration.
[View source.]

How Will President Biden's Elevation of Environmental Justice Within the EPA Affect Your Permitted Facility or Redevelopment Project?
https://www.natlawreview.com/article/transition-thoughts-how-will-president-biden-s-elevation-environmental-justice
ARTICLE BY Maribel N. Nicholson-Choice
Wednesday, February 3, 2021

The Biden administration continues to make many major environmental policy actions aimed at climate change, enforcement, and several other issues. GT continues to track these changes in key areas on our E2 Law Blog, including this one on environmental justice through our "Transition Thoughts" series.

President Joe Biden is expected to sign an executive order that will elevate environmental justice within the U.S. Environmental Protection Agency (EPA) by establishing two environmental groups: The White House Environmental Justice Advisory Council and the White House Environmental Justice Interagency Council. Both groups are expected to report to the Chair of the White House Council on Environmental Quality, which will report directly to the president. The two groups will revisit the Executive Order 12898 on environmental justice, signed in 1994 by former President Bill Clinton.

As you may recall from my previous posts, Executive Order 12898 does not create any legal cause of action; however, it does weave environmental justice awareness throughout the federal government, requiring EPA to consider how its siting, permitting, and enforcement decisions impact the health of poor people and people of color. The regulated community should expect an overhaul of the EPA's External Civil Rights Compliance Office and a prioritization of investigations of complaints under Title VI of the 1964 Civil Rights Act by "fenceline communities," those minority and poor communities located adjacent to pollution sources.

Regarding the EPA cleanup and redevelopment programs such as the Brownfields, Superfund, and RCRA programs, businesses should expect EPA to create regulatory incentives to promote more equitable distribution of economic benefits in minority and low-income communities where cleanup and redevelopment projects are proposed. In addition to economic benefits, EPA will have a renewed focus on enforcement of environmental cleanup standards and regulations within poor and minority communities.

Industry should also expect a "reboot" of the EPA's EJSCREEN tool, which is an EPA internet database, readily available to the public, that identifies communities living proximately to multiple, permitted pollution sources. Business can access this tool to identify "fenceline communities" located adjacent to existing or proposed permitted facilities such as manufacturing facilities, gas stations, power plants, paper mills, and other permitted operations that are sources of permitted air and water pollution.

Finally, the regulated community should expect to see more state legislation focused on environmental justice and siting decisions such as in New Jersey and proposed federal environmental justice legislation to reinstitute Title VI private right of action written out in the United States Supreme Court's 2001 decision in Alexander v. Sandoval. Prudent businesses should take certain precautionary actions now to prepare for the potential impact of state and federal environmental justice policy on permitted facilities and redevelopment projects.

Message

From: Vega, Victoria [Vega.Victoria@epa.gov]
Sent: 3/17/2021 5:22:37 PM
To: AO OPA Individual News Clips [AO_OPA_Ind_News_Clips@epa.gov]; AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Media Clips: Morning Edition March 17, 2021

Daily Media Clips: Morning Edition March 17, 2021

Air

- JEAN CHEMNICK, E&E NEWS **Whiff of the unthinkable at EPA: CO2 standards for states**
- WRITER/JOURNALIST NOT MENTIONED, GIBSON DUNN **U.S. EPA Releases Final Rule Tightening Emissions Limits for Power Plants in 12 States**
- RACHEL FRAZIN, **THE HILL** **EPA finalizes rule aimed at reducing smog pollution across state lines**

Water

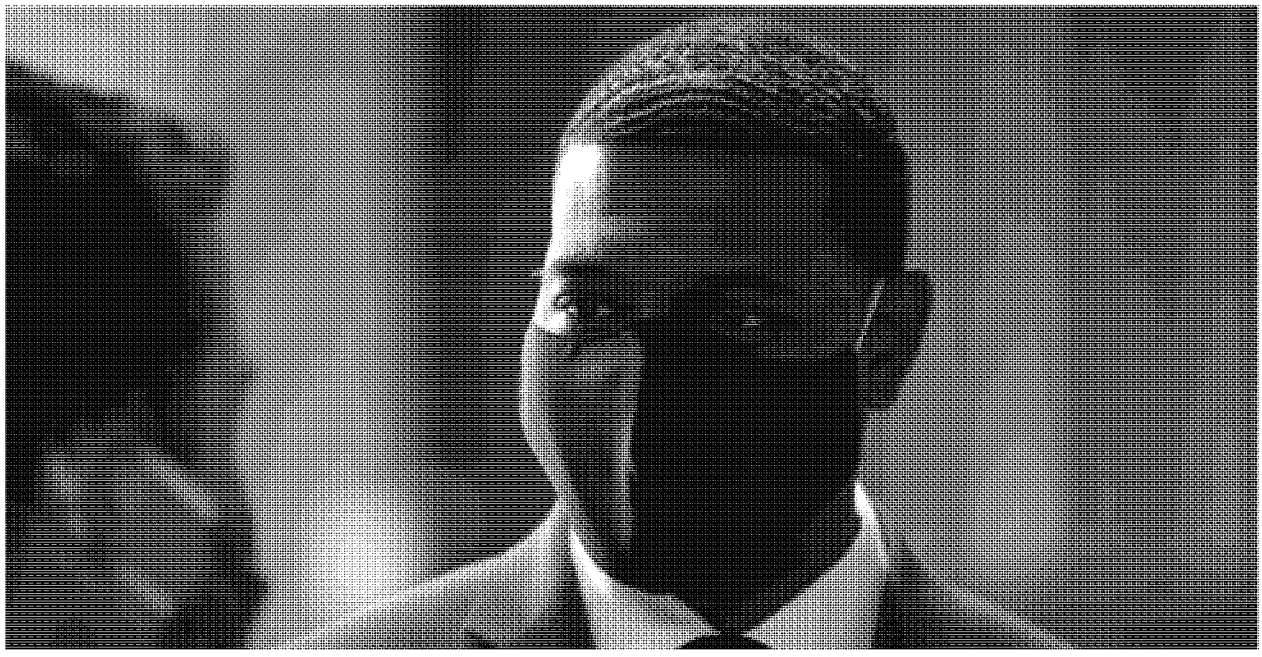
- FRANK KUMMER, THE PHILADELPHIA INQUIRER **PFAS found in 72% of drinking water samples in Philly's suburbs**
- ANASTASIA E. LENNIN, THE STANDARD TIMES **Quincy company that dredged New Bedford Harbor fined, again, by EPA**
- REBECA THIELE, WFYI INDIANAPOLIS **EPA Announces Cleanup Plan For Polluted Water, Soil In Martinsville**

Environmental Justice

- ROB LONG, THE PALM BEACH POST **Long: Brownfields bedevil poor communities in Palm Beach County**

Air

Whiff of the unthinkable at EPA: CO2 standards for states
BY JEAN CHEMNICK, E&E NEWS



EPA Administrator Michael Regan is working on climate regulations. Environmental groups are pushing the agency to establish carbon dioxide standards for municipalities, similar to restrictions on air pollution. Francis Chung/E&E News

There's renewed hope among climate advocates for an ambitious federal rule to limit greenhouse gases using the same type of mechanism that penalizes states for exceeding air pollution thresholds.

The Clean Air Act sets national air quality standards to lower pollutants that cause smog, acid rain and other health dangers. It's never been used for greenhouse gases, but environmental groups now hope EPA might finally use it after ignoring the option for 11 years.

The Center for Biological Diversity and 350.org initially petitioned EPA in December 2009 to use the landmark environmental law to set National Ambient Air Quality Standards, or NAAQS, for greenhouse gas emissions.

Doing so could potentially open the door for a more ambitious and all-encompassing climate program than EPA achieved under former President Obama. It would require states to hold their climate-warming emissions to a specific level.

"In our view, the NAAQS program is the strongest and most far-reaching Clean Air Act tool for this work," said Maya Golden-Krasner, deputy director of the Climate Law Institute at the Center for Biological Diversity.

She said the policy would encourage states to "optimally reduce emissions across all sectors and sources, and thus achieve much more in less time than a solely sector-by-sector regulation under other Clean Air Act programs."

Mitigation options run the gamut from market-based mechanisms like cap and trade to command-and control regulation, but states would ultimately decide.

It's unclear whether EPA is actively considering such a standard for carbon dioxide and other climate pollutants. But early this month, Jane Nishida, who served as the acting EPA administrator until Michael Regan was sworn in as the new EPA chief on March 11, issued a brief retraction of the Trump administration's eleventh-hour denial of the Center for Biological Diversity and 350.org's petition proposing that EPA establish the sweeping health-based standards.

Nishida gave no indication that EPA would pursue the idea, saying in her letter to the petitioners only that the withdrawal was warranted, "as the agency did not fully and fairly assess the issues raised by the petition."

She issued similar retractions of other last-minute denials of petitions for proposed regulations submitted by the New York University School of Law's Institute for Policy Integrity and Food & Water Watch.

But Golden-Krasner of the Center for Biological Diversity said she saw some cause for optimism in EPA's speedy reversal.

"I get a sense that the Biden administration is exploring all possible angles for how to address the climate crisis and didn't want to necessarily rule this one out," she said.

The two groups' petition was originally submitted to EPA at the end of President Obama's first year in office, before the agency had issued its regulations dealing with climate change. It remained unanswered under both the Obama and Trump administrations until Jan. 19 of this year, when then-EPA Administrator Andrew Wheeler denied it.

The section of the Clean Air Act that the Center for Biological Diversity and 350.org want to be used for reining in greenhouse gases is currently used to limit smog and soot. It allows EPA to set ambient air quality standards at levels that protect public health and welfare, and then mandates that states submit plans for maintaining those levels.

Long-term failure to meet the standards can result in consequences for state and local governments, including the imposition of an abatement plan by EPA that might limit economic activity in a specific region or the loss of federal highway funds.

This section of the Clean Air Act prohibits EPA from considering cost when setting standards — a limitation that doesn't apply to Section 111 of the law, which EPA has used under both Obama and Trump to set carbon standards for sectors like power plants and oil and gas development.

Wheeler's denial of the petition, issued on the last full day of the Trump administration, argued that the groups' proposal was untenable because greenhouse gases are global pollutants. Therefore, he argued, "no state implementation plan could possibly have any measurable effect on the concentration of greenhouse gases within its own borders, and no state could ever come into attainment on the basis of state level action."

A key aspect of the Center for Biological Diversity and 350.org's proposal is that EPA adopt a national air quality standard of 350 parts per million of carbon dioxide equivalent. That's a level at which scientists say the world could avoid the worst impacts of climate change, but it's also a concentration the world blew past several years ago.

The global atmosphere currently contains more than 410 ppm of CO2e, with greenhouse gases mixing evenly regardless of whether they're emitted in Chicago or Beijing. Wheeler predicted the result would be "nationwide and perpetual nonattainment."

But Karl Coplan, a professor at the Elisabeth Haub School of Law at Pace University, said the Clean Air Act provides relief if international emissions are the sole reason that a region in the United States can't reach attainment.

He argued that EPA could adopt only secondary — not primary — national air quality standards for greenhouse gases. That proposal, put forward in a recent article published in the Georgetown Environmental Law Review, would avoid a problem raised by some critics of air quality standards for carbon.

Where "primary" standards require attainment within a decade, secondary standards, which are based on public "welfare" instead of health, lack firm deadlines that would be hard to achieve given the length of time greenhouse gas emissions remain in the atmosphere.

On the whole, Coplan said, he favors "just biting the bullet and going with greenhouse gas NAAQs."

"We're in a time of crisis, and the time for baby steps and half-measures have come and gone," he said.

But it's unclear whether that's the route EPA will take.

Regan and Gina McCarthy, the Obama-era EPA administrator whom President Biden has charged with coordinating his domestic climate agenda, have spoken regularly about the need for a sectoral approach to regulation.

Regan told The New York Times in an interview published this week that the agency is already drafting new rules for power plants and automobiles. This sector-specific approach wouldn't necessarily preclude EPA from establishing a national air quality standard, too.

Support for the promulgation of greenhouse gas NAAQs standards is relatively limited, even from influential green groups devoted to climate mitigation.

Records of the daily schedule for Joe Goffman, the top political appointee at EPA's Office of Air and Radiation, obtained by an E&E News Freedom of Information Act request, show that he met with Natural Resources Defense Council climate director David Doniger on Jan. 26 to discuss national air quality standards and power plant rules. Doniger said NRDC is not asking EPA to promulgate NAAQS for climate pollutants.

"We are pursuing other Clean Air Act mechanisms that we think offer the potential for quicker abatement," he said via email.

Some experts have questioned whether the Supreme Court, with a strong conservative majority, would favor a rule compelling states to make steep cuts to emissions from a host of sectors at once.

But Coplan of Pace University said the plan, while ambitious, is on firm ground textually. The Clean Air Act allows EPA to set limits for pollutants that endanger public health and welfare — a finding EPA made more than a decade ago and that the courts have upheld.

Listing greenhouse gases as criteria pollutants for the purpose of establishing a national air quality standard would be a "no-brainer," he said. It would also be difficult to undo in subsequent administrations.

The last half-decade has shown that sectoral rules, too, can run afoul of the courts or be reversed after a change in administration.

The Obama-era power plant rule for carbon, known as the Clean Power Plan, was stayed by a less conservative Supreme Court in 2016, even before the Trump administration repealed and replaced it.

Doubts persist about how the high court would treat another rule that, like the Clean Power Plan, takes an expansive view of the "best system of emissions reduction."

If EPA were to decide to move forward with national air quality standards for carbon, it would start by listing the gases as criteria pollutants.
That would trigger EPA into setting the standards. When they are final, states would determine how to reach attainment. It is a regulatory process that would likely stretch well beyond Biden's first four years in office.
Reporter Sean Reilly contributed.

U.S. EPA Releases Final Rule Tightening Emissions Limits for Power Plants in 12 States
WRITER/JOURNALIST NOT MENTIONED, GIBSON DUNN
On March 15, 2021, the U.S. Environmental Protection Agency ("EPA") issued a final rule that requires electric generating units ("EGUs," i.e., power plants) in 12 states to reduce ozone season nitrogen oxides ("NOx") emissions. This final rule, issued pursuant to a court-ordered deadline, is the first significant regulatory action finalized by the Biden EPA.

Background. In 2008, EPA set new National Ambient Air Quality Standards ("NAAQS") for ozone (the "2008 ozone NAAQS").[1] This action triggered a requirement for states to submit State Implementation Plans ("SIPs") to EPA addressing, in part, obligations under the Good Neighbor Provision of the Clean Air Act, pursuant to which SIPs must:

contain adequate provisions . . . prohibiting . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].[2]

The Good Neighbor Provision effectively "requires upwind States to eliminate their significant contributions to air quality problems in downwind States."[3] In general, states with non-attainment areas classified as Moderate or higher must submit SIPs to EPA to bring those areas into attainment according to the statutory schedule.[4] Under the 2008 ozone NAAQS, downwind states were required to comply with the NAAQS by July 20, 2018 (for areas in Moderate non-attainment) and by July 20, 2015 (for areas in Marginal non-attainment).[5]

Section 110(c)(1) of the Clean Air Act requires EPA to promulgate a Federal Implementation Plan ("FIP") within two years after EPA: (1) finds that a state has failed to make a required SIP submission, (2) finds an SIP submission to be incomplete, or (3) disapproves an SIP submission.[6]

In 2011, EPA promulgated the Cross-State Air Pollution Rule ("CSAPR"), identifying emissions in 28 states that significantly affected the ability of downwind states to comply with 1997 and 2008 ozone NAAQS and the 2006 NAAQS for PM2.5, and limiting these emissions by setting sulfur oxide ("SOx") and annual and seasonal NOx "budgets." EPA then promulgated FIPs for each of the 28 states covered by CSAPR that required EGUs in the covered states to participate in regional trading programs to achieve the necessary emission reductions.[7]

In 2016, EPA promulgated an update to CSAPR to revise seasonal ozone NOx emissions budgets for 22 states (the "CSAPR Update").[8] The CSAPR Update implemented the budgets through FIPs requiring sources to participate in a revised CSAPR NOx ozone season trading program beginning with the 2017 ozone season, but did not require the upwind states to eliminate their significant contributions to downwind non-attainment by any specific date.[9] The CSAPR Update also did not address emissions from non-EGUs.[10] In 2018, EPA promulgated the CSAPR "Close-Out," which determined that no further reductions in NOx emissions were required with respect to the 2008 ozone NAAQS for 20 of the states covered by the CSAPR Update.[11]

A host of environmental groups and states challenged the CSAPR Update in the D.C. Circuit, alleging that the rule either over-controlled or under-controlled upwind emissions.[12] The court upheld the CSAPR Update in most respects; however, the court rejected EPA's argument that Clean Air Act Sections 110(a)(2)(D)(i) and 111, 42 U.S.C. §§ 7410(a)(2)(D)(i) & 7511, when read together, do not require Good Neighbor emissions reductions by a particular deadline.[13] The court held that because the rule did not require upwind states to eliminate their significant contributions to downwind ozone by the deadlines for downwind states to comply with the 2008 ozone NAAQS (or by any date at all), the CSAPR Update was inconsistent with the requirements of the Clean Air Act.[14] The court remanded

the CSAPR Update to EPA without vacatur.[15] Shortly thereafter, a different panel of the D.C. Circuit vacated the CSAPR Close-Out because it "rest[ed] on an interpretation of the Good Neighbor Provision now rejected."[16]

Following these D.C. Circuit decisions, certain downwind states filed suit against EPA in the Southern District of New York on the basis that, due to remand of the CSAPR Update and the vacatur of the Close-Out Rule, EPA had failed to perform its statutory duty to promulgate FIPs for upwind states addressing the Good Neighbor obligations for the 2008 ozone NAAQs.[17] The court agreed with the states and directed EPA to issue a final rule regarding the required FIPs by March 15, 2021.[18]

October 2020 Proposed Rule. On October 30, 2020, EPA published a proposed rule in response to these cases—the Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (the "Revised CSAPR Update Proposed Rule").[19] The key elements of the proposed rule are:

A finding that the projected 2021 emissions from 9 upwind states do not significantly contribute to non-attainment or maintenance problems in downwind states and that the CSAPR Update FIPs for these states fully addressed the Good Neighbor obligations of these states.
A determination not to impose further obligations (i.e., budget reductions) on these 9 states.
A finding that the projected 2021 emissions for 12 upwind states significantly contribute to non-attainment or maintenance problems in downwind states.
Promulgation of new or amended FIPs to revise state NOx emission budgets reflecting additional emissions reductions from EGUs.
No limits on ozone season NOx emissions from non-EGU sources.
Some commenters to the Revised CSAPR Update Proposed Rule have asserted that the Proposed Rule over-controls upwind emissions and requires reductions in an unreasonably short amount of time, while other commenters asserted that the Proposed Rule under-controls upwind emissions and should require emissions reductions from non-EGU sources.

Final Rule and Key Takeaways. Consistent with the deadline set by the Southern District of New York, on March 15, 2021, EPA issued its final rule (the "Revised CSAPR Update").[20] The final rule closely tracks the October proposal. The key elements of the final rule are:

A finding that further ozone season NOx emissions reductions to address Good Neighbor obligations as to the 2008 ozone NAAQS are necessary for 12 of the 21 states for which the CSAPR Update was found to be only a partial remedy. As such, EPA promulgated new or revised FIPs for these states that include new EGU NOx ozone season emissions budgets, with implementation of these emissions budgets beginning with the 2021 ozone season. These states are: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.[21]
A determination that it is feasible for EGUs to comply with the enhanced stringency of the budgets and there is sufficient time before the effective date of the rule to prepare to meet these budgets by either undertaking emissions control measures (other than installation of state-of-the-art combustion controls, which take effect for the 2022 ozone season) or through a new Trading Program.[22]
Implementation of new state-level, ozone season emissions budgets through a new CSAPR NOx Ozone Season Group 3 Trading Program comprising these 12 states. As part of establishing the Group 3 Program, EPA is permitting the creation of a limited initial bank of allowances by converting allowances banked in 2017–2020 under the existing Group 2 Trading Program at a conversion ratio of 8:1 (and certain additional conversions at a ratio of 18:1).[23]
A conclusion that the final rule resolves the interstate transport obligations of 21 states under the Good Neighbor Provision for the 2008 ozone NAAQS.[24]
A conclusion that limits on ozone season NOx emissions from non-EGU sources are not required to eliminate significant contribution to non-attainment or interference with maintenance in downwind states under the 2008 ozone NAAQS.[25]
The Revised CSAPR Update is likely EPA's first use of a revised approach to calculate the social cost of carbon in a final regulatory action. According to EPA, climate benefits of the rule were based on the reductions in CO2 emissions and

calculated using four different estimates of the social cost of carbon: model average at 2.5 percent, 3 percent, and 5 percent discount rates, and 95th percentile at a 3 percent discount rate.[26]

Looking to the future, the Revised CSPAR Update did not address any state's obligations under the 2015 ozone NAAQS, which set lower primary and secondary standards for ground-level ozone.[27] EPA noted in the Revised CSAPR Update that it is working separately to address Good Neighbor obligations under the 2015 ozone NAAQS, "including consideration of any necessary control requirements for EGU and non-EGU sources."[28] As environmental groups continue to push for emissions reductions from non-EGU sources, and as EPA continues to consider this issue (including whether emissions reductions become available at a comparable cost threshold to that of EGUs), it is possible that future rulemakings will seek to implement more stringent emissions reductions or emissions reductions from non-EGUs. Litigation challenging the Revised CSAPR Update in the D.C. Circuit appears likely, including the potential for motions seeking a stay of the rule pending judicial review based on the requirement for affected facilities to begin compliance with the more stringent emissions budgets when the rule becomes effective 60 days after publication.[29]

EPA finalizes rule aimed at reducing smog pollution across state lines

BY RACHEL FRAZIN, THE HILL

The Environmental Protection Agency (EPA) has finalized a rule that aims to reduce smog pollution from 12 states that can cross state lines, it announced late Monday.

The rule will require additional controls for nitrogen oxides, which can form smog or ozone pollution, on power plants in the dozen states.

It follows a 2019 court decision requiring the agency to take additional action to prevent downwind states from being impacted by their neighbors' pollution.

The rule was first proposed in October under the Trump administration, but was finalized this year, making it among the first environmental actions the Biden administration has carried out.

"The action we are taking today will not only help states meet their clean air obligations, but, more importantly, deliver cleaner, healthier air to millions of Americans starting this summer," EPA Administrator Michael Regan said in a statement.

The agency said it expects to reduce nitrogen oxide emissions by 17,000 tons starting this year. Exposure to these types of pollutants have been linked to lung issues including asthma attacks.

While advocates characterized the rule as a positive step, some said they wished the Biden administration had worked toward more significant reductions.

"They could have required greater reductions in ... the emissions that create ozone," said Kathleen Riley, an attorney with Earthjustice.

Riley also took issue with a provision that allows states to buy credits from others that make more progress on reducing emissions, saying this can create pollution "hot spots" for the states that don't sufficiently reduce pollution.

"We've seen how relatively unrestricted emissions credit trading can create those pollution hot spots and we think that emissions credits trading in the future has to be restricted to protect overburdened communities," she said.

The rule will impact emissions from Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia.

Water

PFAS found in 72% of drinking water samples in Philly's suburbs

BY FRANK KUMMER, THE PHILADELPHIA INQUIRER

Though none of the PFAS exceeded the current EPA guideline, advocacy groups and some scientists contend there are no safe levels of the widely-used family of chemical compounds.

Little Neshaminy Creek is one of many rivers that is PFAS water contaminating local waterways and drinking water on Tuesday, Jan. 7, 2020. (Tyger Williams/The Philadelphia Inquirer/TNS)

PFAS "forever chemicals" have been detected in 33 of 46 public water locations in Philadelphia's suburban counties, or 72% of samples, although none exceeded totals of federally suggested limits, according to an Inquirer analysis of new state data.

Statewide, however, the Pennsylvania Department of Environmental Protection found PFAS in only 35% of 114 sites tested in a broader sampling of 22 counties. Similarly, none of those exceeded the current EPA guideline of 70 parts per trillion, although some scientists contend there are no safe levels.

The Inquirer looked at results for Philadelphia, Bucks, Montgomery, Chester and Delaware counties. The data indicate most PFAS samples were found in Bucks and Montgomery, though that was expected because of past contamination from military bases, and that's where the state focused most of its effort.

Drinking water of residents living near the Naval Air Warfare Center in Warminster and Naval Air Station in Willow Grove was tainted by the "forever chemicals" that leached off bases from firefighting foam.

No PFAS were detected in the Philadelphia Water Department system, although a small amount was found in a private system located within the city. There was also some PFAS in Chester and Delaware counties.

PFAS are a family of chemical compounds widely used to make coatings for products needing resistance to heat, oil, stains, grease, and water. They have been used for decades in clothing, furniture, adhesives, food packaging, heat-resistant nonstick cooking surfaces, and wire insulation.

The compounds don't break down, and accumulate over time in the human body. There is evidence they can impact human health.

The testing carried out in 2020 was part of Gov. Tom Wolf's executive order to address PFAS [an acronym for perfluoroalkyl and polyfluoroalkyl substances], in public drinking water. The state focused most of its sampling on

sources located within a half mile of a potential source of contamination, such as military bases, fire training sites, landfills, and manufacturing facilities.

Water was sampled at both municipal water systems, and nonresidential systems such as those at businesses and schools. apartments, and medical facilities.

Pennsylvania has not yet set a maximum contaminant level for PFAS, but is in the process of creating one. The EPA has also not set a firm limit, only guidance.

PFAS in Pennsylvania Water Systems

Table shows local location sample for a class of chemicals known as PFAS. The EPA has issued a guideline that the total of PFOS and PFOA, both PFAS compounds, should not total more than 70 parts per trillion, though some scientists believe no levels are safe.

Page 1 of 3 >

LOCATION	Total PFOS + PFOA
BUCKS COUNTY	
Bucks Run Apartments	None
Perkasie Regional Authority	None
Doylestown Borough Water Department	25.3
Quakertown Borough	None
Quakertown Borough	20.5
Quakertown Borough	4
Quakertown Borough	11.4
Neshaminy Manor Center	9.2
Boro of Dublin	None
Milford Twp Water Authority	None
DTMA Main System	19.8
Richland Twp Water Auth	15.8
Plumstead Northern System	9.5
Schoolhouse Learning Center	4
Oldcastle Precast	9.2
Oldcastle Precast	4.4
Hanover Commons (Kiddie Academy)	None
Grand View Hospital	20.5
Air Liquide Medical	None

PFAS in Pennsylvania Water Systems

Table shows local location sample for a class of chemicals known as PFAS. The EPA has issued a guideline that the total of PFOS and PFOA, both PFAS compounds, should not total more than 70 parts per trillion, though some scientists believe no levels are safe.

LOCATION	Total PFOS + PFOA
Air Liquide	None
Summit Condo/Charter Mgt	6.2
Bucks County Community College	10.1
Plumstead Christian Upper School	12.6
Holy Nativity Episcopal Church	5.2
CHESTER COUNTY	
Downingtown Water Authority	7.7
Coventry Terrace	5
Scotts Oxford	None
Warwick Daycare - North Coventry	7.9
Whiteland Pointe	11.4
DELAWARE COUNTY	
Aqua PA Main	7.3
MONTGOMERY COUNTY	
WEC International	25.6
Collegeville Trappe Joint PWD	16.1
East Greenville Boro Water Dept	None

Table: Frank Kummer • Source: Pennsylvania Department of Environmental Protection

PFAS in Pennsylvania Water Systems

Table shows local location sample for a class of chemicals known as PFAS. The EPA has issued a guideline that the total of PFOS and PFOA, both PFAS compounds, should not total more than 70 parts per trillion, though some scientists believe no levels are safe.

< Page 3 of 3

LOCATION	Total PFOS + PFOA
East Greenville Boro Water Dept	14.2
PA American - Norristown	5.4
North Wales Water Auth.	None
Telford Borough Auth.	17.1
Audubon Water Company	25.3
Audubon Water Company	4
St. Gabriels Hall	14.7
Aqua PA Main System	9.6
Aqua PA Main System	14.7
Aqua PA Main System	None
Aqua PA Main System	4.6
PHILADELPHIA COUNTY	
Philadelphia Water Department	None
Schuylkill Center for Env. Ed.	9.9

Table: Frank Kummer • Source: Pennsylvania Department of Environmental Protection

Sampling started in 2019. Data released Friday are part of a second round of testing from 2020. The DEP has identified 493 public water system sources as potential sampling sites and is continuing to test samples from other locations.

In its recent testing, Pennsylvania looked for the presence of six PFAS compounds: PFOS, PFOA, PFNA, PFHxS, PFHpA, and PFBS. It added the total to see if they fell under the 70 parts per trillion guideline.

However, the state also tested for 12 other compounds that weren't included in that total. There are more than 4,700 known PFAS compounds.

Bucks and Montgomery counties have continued to be a focus since some residents of Horsham, Warrington, and Warminster residents took part in a 2018 pilot study that showed elevated levels of PFAS in their blood compared with the American average. Water in those communities was contaminated by the bases. A national study is underway to test adults and children in Bucks and Montgomery Counties.

Locally, the highest levels were found at a system used by WEC International in Fort Washington, Montgomery County that had a combined total of 25.6 parts per trillion. Representatives of WEC, a Christian organization, could not be reached for comment.

Next highest were the Doylestown Water Department in Bucks County, and Audubon Water Company in Montgomery County, both at 25.3.

"We are certainly concerned," John Davis, Doylestown Borough Manager, said of the results.

Davis said the borough draws on a number of wells and the DEP sample came from one of them, though he said there's no way to pinpoint the source of the PFAS. "We'll probably never know," he said.

Davis said he hopes that any future state regulation that sets a maximum contaminant level for PFAS includes funding for small systems like the borough's. The EPA recommends several treatments, such as reverse osmosis, but Davis said those are prohibitively expensive.

For residents, the Environmental Working Group lists several types of home filtration systems, and says activated carbon is the cheapest, but only reduces one type of PFAS. Reverse osmosis is more expensive, but can completely eliminate the chemicals.

Hope Grosse, co-founder of Buxmont Coalition for Safer Water, said "it's not surprising" the state's results showed PFAS in local public water systems. "We know that the Warminster and Willow Grove air bases are within five miles of each other and water traveled into ... Neshaminy Creek and flows in different ways."

Grosse noted that the state did find the presence of types of PFAS that weren't included in the totals.

For example, a sample from the Telford Borough Authority detected 87.5 parts per trillion of PFHxA that was not included in the total PFAS for the authority, which came in at 17.1 parts per trillion.

The DEP said that's because it included only those PFAS compounds — PFOA and PFOS — that are part of the EPA's guidance.

Grosse said Pennsylvania needs to adopt a maximum contaminant level quickly, and cited New Jersey, which set maximum contaminant levels in 2018 of 14 parts per trillion for PFOA and 13 parts per trillion for PFOS.

"Why don't we have regulations?" Grosse asked. "Why are they taking their time? New Jersey has already figured it out, so why can't we?

Jamar Thrasher, a spokesman for the DEP, said the department "will be moving forward with developing a pre-draft proposed rulemaking later this year."

Tracy Carluccio, deputy director of the Delaware Riverkeeper Network, noted that the test results do not include private water wells, which she called "a huge flaw in the testing plan."

"Greater than one quarter of the population in Pennsylvania get its drinking water from private wells," Carluccio said.

Overall, Maurice Sampson of Clean Water Action said "the numbers are sort of irrelevant" because he does not believe there is a safe level .

"We need to know how to reduce what's in the water and eliminate its sources," Sampson said.

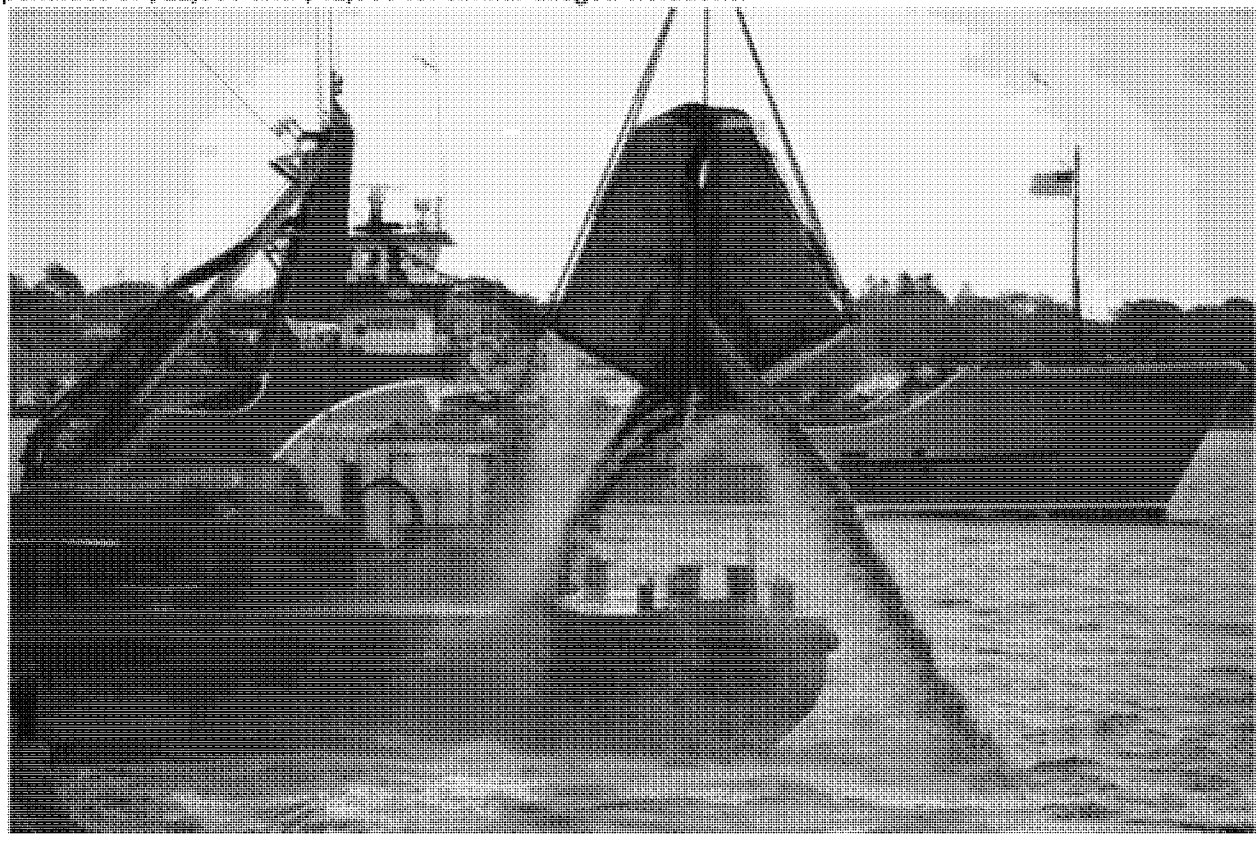
Quincy company that dredged New Bedford Harbor fined, again, by EPA

BY ANASTASIA E. LENNIN, THE STANDARD TIMES

Under a recent settlement with the U.S. Environmental Protection Agency, a Quincy-based company has agreed to pay $185,000 for alleged violations of environmental law in its transport of dredged sediment from the New Bedford Harbor, the EPA announced Monday.

Cashman Dredging & Marine Contracting Co., LLC, will pay the penalty for alleged violations of the Marine Protection, Research, and Sanctuaries Act, also known as the Ocean Dumping Act. The law requires permits for dumping and prohibits disposal in the ocean of material that would degrade or endanger human health or the marine environment.

This is not the EPA's first enforcement case with the company: In 2010 and 2015, Cashman Dredging was issued penalties of $12,500 and $42,000 for similar alleged violations.



The agency's website states the latest alleged violations occurred in the summer of 2020 during the transport of dredged material from the harbor to an authorized disposal site in Rhode Island. On one occasion, a disposal vessel dumped dredged material over 2 miles outside the disposal site and on three occasions, dumped it in the wrong locations within the disposal site, according to a statement from the EPA.

According to the company's website, Cashman Dredging was awarded a $21 million contract from the U.S. Army Corps of Engineers to dredge the lower harbor as part of the EPA's efforts to remove cancer-causing chemicals from the Superfund site.

The Standard-Times reported the company finished dredging the area in June 2018, with the exception of a half-acre area at Moby Dick Marina.

An EPA spokesperson said in an email that the dredged material of this recent violation was removed for the construction of a new confined aquatic disposal cell and was not part of the Superfund site cleanup. The agency also tested the sediment for contamination and determined it was suitable for ocean disposal.

According to the EPA, Cashman Dredging has committed to changing its operations to ensure compliance with regulations in the future.

“Proper disposal of dredged material plays a vital part in protecting our oceans,” said EPA New England Acting Regional Administrator Deborah Szaro. “EPA works to enforce federal ocean dumping requirements to protect the marine environment while maintaining safe maritime navigation.”

Under the Ocean Dumping Act of 1972, the agency designates dredged material disposal sites for long-term use. Each site has a specific management and monitoring plan and disposal is prohibited outside of these sites because of the potential of harm to the marine environment.

The act also bans ocean disposal of several types of material — including radiological, chemical, and biological warfare agents — and requires a permit for the dumping of certain other materials.

EPA Announces Cleanup Plan For Polluted Water, Soil In Martinsville

BY REBECA THIELE, WFYI INDIANAPOLIS

The Environmental Protection Agency has come up with a plan to clean up toxic PCE and TCE in Martinsville — the same chemicals suspected of causing rare childhood cancers in Franklin.

The agency suspects the water pollution at the Martinsville Superfund site mostly came from a local laundry and dry cleaning business in the 1980s. Multiple residents in Martinsville have been diagnosed with rare stomach cancers and other illnesses.

The EPA wants to inject chemicals into the groundwater to help break down the toxic PCE and TCE.

Tom Wallace is a retired environmental engineer and the founder of the Martinsville Indiana Superfund Site Association. He said the EPA's water cleanup plan is close to what the city and its residents wanted, but he'd prefer something quicker and hopes the agency will keep an open mind.

"It is effective, but it's longer term. We're talking 17 to 30 years in many cases. And looking at some of the PlumeStop things, they've done it in two years or less," Wallace said.

PlumeStop is what's being used to clean Franklin's groundwater.

Wallace said it's been about 30 years since the contamination happened — in that time an entire generation in Martinsville has been exposed to these harmful chemicals. His group is working with Purdue University researchers to study how exposure to PCE specifically might be affecting the city's children — especially their ability to learn.

The EPA also hopes to address harmful vapors that could be seeping into homes and businesses from the soil — but that's been a challenge.

READ MORE: MARTINSVILLE RESIDENTS STILL AT RISK FROM OLD CONTAMINANTS

Erik Harden is the EPA's remedial project manager for the Martinsville site. He said the agency reached out to the owners of more than 200 properties to test for toxic vapors, but only got access to about a quarter of them.

The EPA is working to form a community advisory group of residents to act as a liaison between the agency and people living in Martinsville.

"We are hoping that that is one of the things that this will help with — is that folks get the word out and we get a better rate of access for sampling," Harden said.

Wallace said there are a lot of rental properties in the city and landlords may be concerned that testing for the pollution will affect their property values. He said there may be ways renters can still allow the EPA and other researchers into their homes, but many renters still fear retaliation from their landlords.

The EPA also wants to let residents on private wells know that their water may not be safe to drink. The city water, however, is being treated for the toxic chemicals.

There are at least three other areas of groundwater pollution in Martinsville not included in the EPA's Superfund cleanup.

The agency will hold a virtual public meeting about forming the community advisory group on Wednesday, March 24 at 6 p.m.

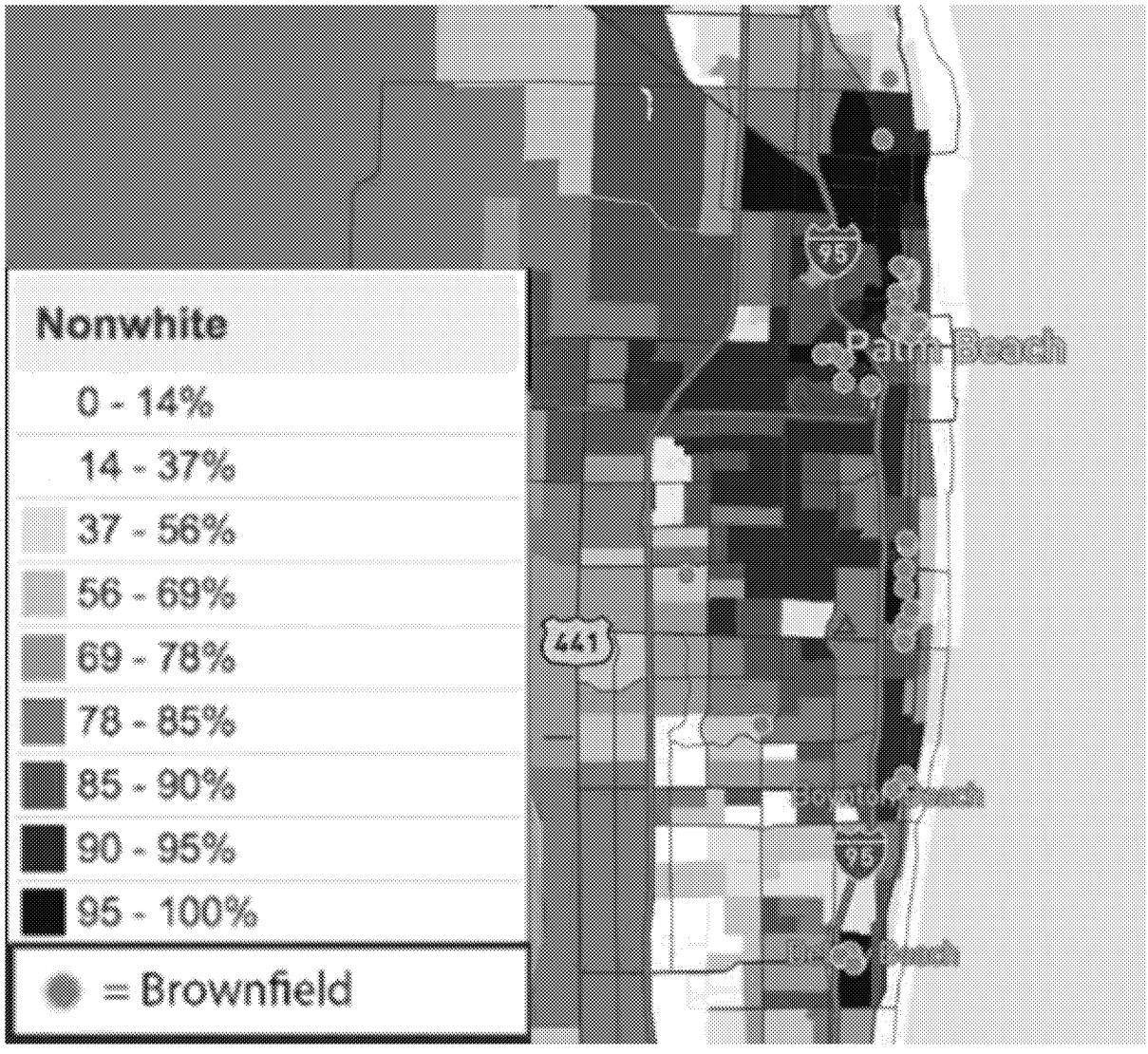
Contact reporter Rebecca at rthiele@iu.edu or follow her on Twitter at @beckythiele.

Indiana Environmental reporting is supported by the Environmental Resilience Institute, an Indiana University Grand Challenge project developing Indiana-specific projections and informed responses to problems of environmental change.

Environmental Justice

Long: Brownfields bedevil poor communities in Palm Beach County

BY ROB LONG, THE PALM BEACH POST



Imagine living in an environment where you have no control — one that is at the mercy of natural disasters, or of being used as a waste dump — and having no means to buffer yourself. That is the reality for many low-income Americans, and disproportionately, communities of color.

Palm Beach County is no exception.

Across the United States and Palm Beach County, the decline of industrial production over many decades created a proliferation of unused, contaminated properties. These sites, which contain known or suspected hazardous substances — some with soil contamination — are referred to as "brownfields" in urban planning.

The graphic accompanying this article illustrates the strong co-locational relationship between environmental justice populations and sites that may present significant environmental and human health hazards.

Generated from census data, the darkest areas on the map represent the highest density of communities of color (specifically Black and Hispanic.) Conversely, the brightest areas on the map represent the highest densities of white residents. The dots are brownfield sites from the Environmental Protection Agency's database.

The phenomenon represented here, environmental racism, translates into poorer overall health outcomes and higher risks of environmental illnesses than richer, predominantly white communities experience.

It's not a coincidence that wealthy rural enclaves aren't built over industrial dumps filled with toxic metals or next to contaminated materials from storms, oil spills, and other disasters — that is one thing that the graphic makes clear.

Story from Wines of British Columbia
3 tips for a future British Columbia wine getaway
Plan a dream wine-tasting route through this gorgeous, vineyard-dotted region of Canada.
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The U.S. Environmental Protection Agency (EPA) defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies." A neighborhood where the annual median household income is no more than 65% of the statewide median, or whose population is made up of 25% people of color, foreign-born individuals or those lacking English language proficiency, is viewed as an "environmental justice population."

The Equal Protection Clause of the U.S. Constitution entitles everyone to equal protection under the law. That includes equal environmental protection. Local governments can look to the federal Brownfields Redevelopment Act for a wide array of incentives to remediate and redevelop these sites, including low-interest loans and tax credits. However, despite the well-intentioned incentive programs provided by the state of Florida, Palm Beach County and various community redevelopment agencies, these environmental justice communities have generally seen little benefit from redevelopment projects.

Why? Too often, "experts" swoop in with their answers, but fail to include the voices of local leaders, organizations, and community stakeholders. Eventually, the "solutions" involve the residents' forced displacement. As the environmental hazards are removed and the area opens up to higher-grade development, the long-term residents, workers, and small businesses are pushed out because of tax increases, elevating property values, or rising rents.

Now these issues may get long-overdue attention. In January, President Biden created a new White House council on environmental justice and pledged that 40% of the benefits ("justice40") from federal investments in clean energy and clean water would go to communities that bear disproportionate pollution.

He's also putting environmental justice advocates in key positions, including people of color, notably Michael Regan, the new head of the Environmental Protection Agency. Regan, the former head of North Carolina's Department of Environmental Quality and the first Black man to head the EPA, plans to create a community notification system that provides real-time data on pollution and move with a sense of urgency on climate change.

Biden's National Crisis Strategy will pressure the Federal Emergency Management Agency (FEMA) to provide more rapid disaster relief to underserved populations. This move can't come soon enough. Look at the recent crisis in Texas. The blackouts and water issues triggered by the unprecedented winter storm predictably hit low-income and communities of color the hardest. Unable to easily buy a generator or a plane ticket or check into a hotel, people in these communities are too often left to withstand punishing conditions in substandard housing when natural disasters strike.

Biden also promises to improve water quality by declaring PFAS — the toxic "forever" chemicals used in nonstick pans that were recently identified in Delray Beach's water supply as well as dozens of other U.S. city water supplies — a hazardous substance and establish standards for drinking water.

These are important steps at the national level to address racial and income disparities in healthcare outcomes, climate change impact and proximity to environmental contamination. But we must consider the history of land use and under-investments in certain Palm Beach County communities to effectuate meaningful reforms at the local level.

It is our collective responsibility to work against the systemic injustices that have created this disparity — and to do it by shifting away from paternalism and toward empowerment. The public and private sectors alike should invest resources in neighborhood-level relationship building that is sensitive, long-term, representative, and not only assists but prepares the residents most affected to engage in the redevelopment process themselves.

Policies for aiding environmental justice communities must continue to evolve. Housing, access to water, and heating and cooling all must be addressed in a comprehensive way.

It's vital that we use the wave of momentum generated by the justice40 movement to strive towards a sense of inclusive social well-being for all.

Rob Long chairs the Palm Beach Soil & Water Conservation District. Research assistance and data visualization is by Ashley Amian.

Message

From: E&E News [ealerts@eenews.net]
Sent: 2/25/2021 12:10:10 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: February 25 -- E&E Daily is ready

E&E Daily -- Congress. Legislation. Politics.

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AN E&E NEWS PUBLICATION

E&E DAILY — Thu., February 25, 2021

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House Republicans huddle quietly to plot climate strategy

Roughly two dozen House Republicans met privately in Utah last weekend to try to find ways to "reclaim the narrative" from Democrats on combating climate change and promoting conservation.

TOP STORIES

2. INTERIOR:
GOP opposition to Haaland hardens after hearing

3. POLITICS:
Shaky bipartisanship kicks off infrastructure talks

TRANSITION

4. DOE:
Granholm gets bipartisan support in procedural vote

5. NOMINATIONS:
Hearing set on Biden CEQ chair, EPA picks

6. NOMINATIONS:
White House struggles to save Neera Tanden

ON THE HILL

7. PANDEMIC:
COVID-19 package grows with Natural Resources add-ons

8. PUBLIC LANDS:
Senators join push to ban new mining around Grand Canyon

9. POLITICS:

Dems want more from Biden on environmental justice

IN COMMITTEE

10. LAW:

9th Circuit under fire in bipartisan push to add judges

11. CLIMATE:

Bill takes aim at refrigerated truck emissions

12. OCEANS:

Senators promote bill to improve mapping, exploration

UPCOMING HEARINGS AND MARKUPS

13. CALENDAR:

Activity for February 22 - February 28, 2021

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Sent: 3/5/2021 11:52:58 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 5 -- Climatewire is ready

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AN E&E NEWS PUBLICATION

CLIMATEWIRE — Fri., March 5, 2021

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Sources: Vineyard Wind decision expected soon

The Interior Department is nearing a decision on the first large offshore wind facility in the United States. It would be a landmark in President Biden's climate agenda.

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2. WHITE HOUSE:
A new kind of climate expert enters CEQ

3. WHITE HOUSE:
McCarthy: Regulation alone won't meet 2030 climate goals

CLIMATE IMPACTS

4. SCIENCE:
Butterflies are disappearing as the American West warms

POLITICS

5. FINANCE:
Republican members of SEC question its new climate focus

INTERNATIONAL

6. FRANCE:
Activists sue big retailer over Amazon forest damage

7. GERMANY:
Cabinet seeks to improve oversight of firms' delivery chains

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From: E&E News [ealerts@eenews.net]
Sent: 3/9/2021 9:32:23 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 9 -- E&E News PM is ready

E&E News PM -- Late-Breaking News

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AN E&E NEWS PUBLICATION

E&E NEWS PM — Tue., March 9, 2021

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Senate to debate Haaland nomination this week

Senate Majority Leader Chuck Schumer has filed cloture on Rep. Deb Haaland, challenging Republican opposition to President Biden's nominee to lead the Interior Department.

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Clean power group, lobby firm announce hires

3. BUSINESS:

Treasury reinstates sanctions on Israeli mining magnate

4. PUBLIC LANDS:

Bipartisan bill would boost spending for urban parks

5. ADVOCACY:

Tribal activist could get statue at Capitol

6. CLIMATE:

S.C. gov. names state's first chief resilience officer

UPCOMING HEARINGS AND MARKUPS

7. CALENDAR:

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E&E News PM is written and produced by E&E News, which is staffed by a dedicated reporting team within the POLITICO newsroom. A late afternoon roundup providing coverage of all the breaking and developing policy news from Capitol Hill, around the country and around the world, E&E News PM is a must-read for the key players who need to be ahead of the next day's headlines. E&E News PM publishes daily by 4:30 p.m.

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Message

From: E&E News [ealerts@eenews.net]
Sent: 3/3/2021 6:45:40 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 3 -- Greenwire is ready

Greenwire -- The Leader in Energy and Environment News

Read today's Greenwire on the web

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Wed., March 3, 2021

READ FULL EDITION

1. INTERIOR:
Biden admin ditches Trump 'open science' order

The Interior Department today scrapped its version of the Trump administration's controversial "open science" dictate that critics say unduly constrained research important for environmental policy decisions.

TOP STORIES

2. INTERIOR:
Collins pledges Haaland her first GOP 'yes' vote

3. AIR POLLUTION:
Judge slashes Exxon refinery's landmark emissions fine

4. ENVIRONMENTAL JUSTICE:
Miss. water crisis exposes infrastructure inequity

POLITICS

5. NOMINATIONS:
Panel grills Biden CEQ, EPA picks on climate agenda

6. WHITE HOUSE:
Biden taps economists, climate experts for key posts

6. DOE:
Granholm spotlights loan program in first big speech

CONGRESS

8. NATIONAL MONUMENTS:
Lawmakers push to elevate Ill. site of 1908 race riot

9. ENERGY POLICY:
House Oversight probes Texas blackout

10. PLASTICS:
Climate bill's recycling provisions draw cheers, criticism

NATURAL RESOURCES

11. FORESTS:
A trillion trees will cost nurseries billions — study

12. ENDANGERED SPECIES:
FWS offers plan to release more red wolves

13. AGRICULTURE:
USDA reevaluates plan to turn ditch into water pipeline

LAW

14. CLEAN WATER ACT:
10th Circuit revives Trump WOTUS repeal in Colo.

15. PUBLIC HEALTH:
Court backs ban on chemicals in toys but calls for review

16. WILDLIFE:
Attorneys: 'Tiger King' wants new trial

BUSINESS

17. CLEAN TECH:
Firms ink deal for U.S.-Europe rare earths supply chain

18. MINING:
Rio Tinto chairman leaving over destruction of sacred sites

TRANSPORTATION

19. INFRASTRUCTURE:
Report card gives U.S. a C- as roads stagnate

STATES

20. SOUTH DAKOTA:
Noem bills limiting conservation officers hit resistance

21. HAWAII:
Bill would eliminate agribusiness development group

22. CALIFORNIA:
Giraffe dies at LA Zoo after delivering stillborn calf

INTERNATIONAL

23. JAPAN:

Fukushima chief: No need to extend decommissioning target

24. GREECE:

Strong earthquake felt in neighboring nations

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Greenwire is written and produced by E&E News, which is staffed by a dedicated reporting team within the POLITICO newsroom. It's the one-stop source for those who need to stay on top of all of today's major energy and environmental action with an average of more than 20 stories a day. Greenwire covers a complete spectrum of issues, from energy policy to Clean Air Act litigation to public lands management. Greenwire publishes daily by 1:30 p.m.

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From: E&E News [ealerts@eenews.net]
Sent: 3/18/2021 11:07:58 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 18 -- Climatewire is ready

Climatewire -- Policy. Science. Business.

Read today's Climatewire on the web

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Thu., March 18, 2021

READ FULL EDITION

1. BUSINESS:

North Face rejected an oil order for jackets. It went south

The outdoor outfitter's refusal to sell 400 jackets to an energy company erupted into a PR nightmare that highlights the presence of oil and plastic pollution in outerwear.

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TOP STORIES

2. WHITE HOUSE:

Meet the climate team's chief of staff

3. ENERGY TRANSITION:

How coal failed during the Texas deep freeze

POLITICS

4. FINANCE:

3rd U.S. financial regulator vows action on climate

CLIMATE IMPACTS

5. REGULATIONS:

Biden asks court for redo on Trump NEPA rule

SCIENCE

6. PEOPLE:

Climatologist gets personal in upcoming book

BUSINESS

7. FINANCE:

Bond investors urged to weigh climate risks

INTERNATIONAL

8. UNITED KINGDOM:

Industrial pollution to be cut two-thirds in 15 years

9. ADVOCACY:

Activist accuses climate conference of censorship

A message from POLITICO:

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Climatewire is written and produced by E&E News, which is staffed by a dedicated reporting team within the POLITICO newsroom. It provides comprehensive coverage of all aspects of climate change issues. From international agreements on carbon emissions to alternative energy technologies to state and federal GHG policies to corporate sustainability, Climatewire plugs readers into the information they need to stay abreast of this complex issue. Climatewire publishes daily by 7:00 a.m.

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From: E&E News [ealerts@eenews.net]
Sent: 3/16/2021 11:21:09 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 16 -- E&E Daily is ready

E&E Daily -- Congress. Legislation. Politics.

Read today's E&E Daily on the web

E&E DAILY
AN E&E NEWS PUBLICATION

E&E DAILY — Tue., March 16, 2021

READ FULL EDITION

1. REGULATIONS:

Capitol mob may have trashed 3 Trump pollution rules

Rioters who charged the Capitol on Jan. 6 hoping to preserve Donald Trump's power may have actually hurt the former president's environmental legacy.

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TOP STORIES

2. AGENDA:

Things to watch as infrastructure debate unfolds

3. TRANSITION:

High hopes, expectations as Haaland heads to Interior

4. NEWSMAKER:

Joe Neguse makes history of his own as he replaces Haaland

ON THE HILL

5. HOUSE:

Lawmakers to introduce $50B bipartisan water bill

6. NATURAL RESOURCES:
Republicans fire shot against conservation plan

7. SENATE:
Bennet to lead panel rebranded for climate action

8. NOMINATIONS:
Senate Dems schedule votes on more Biden picks

IN COMMITTEE

9. CLIMATE:
Dingell proposes EV manufacturing, infrastructure bill

10. WATER POLICY:
House Republican floats bill to curb EPA veto power

11. ENERGY POLICY:
Bill would require U.S. ships for some oil, gas exports

12. REGULATIONS:
Mike Lee introduces suite of NEPA reform bills

UPCOMING HEARINGS AND MARKUPS

13. CALENDAR:
Activity for March 15 - March 21, 2021

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track their environmental and energy issues in Congress. E&E Daily publishes daily by 7:30 a.m. while Congress is in session.

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From: Enos, Kendra [Enos.Kendra@epa.gov]
Sent: 3/1/2021 5:00:32 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips: Morning Edition 3-1-21

Daily News Clips - Morning Edition
March 1st, 2021

Administration
Inside Biden's uphill battle to restore the EPA after Trump
Agency
A different kind of CERAWeek kicks off
Environmental Justice
Biden administration promises focus on environmental justice
Pollution
After Months of Delay, EPA Quietly Takes Steps Toward Community Outreach on Ethylene Oxide Risks; OIG Once Again Urges EPA to Expedite Community-Specific Notifications
Superfund
N.Y. Submits Revised Plan To Meet Chesapeake Cleanup Goals

Administration
Inside Biden's uphill battle to restore the EPA after Trump
https://grist.org/politics/epa-joe-biden-environmental-law-enforcement-trump/

By Naveena Sadasivam on Mar 1, 2021 at 6:45 am

Laws are only as good as their enforcement. During his four years in office, former President Donald Trump's appointees to the Environmental Protection Agency, or EPA, decimated the agency's ability to catch and penalize polluters breaking environmental rules. As a result of this and longer-term trends, facility inspections and civil cases filed against polluting operations like chemical plants and wastewater treatment centers dropped to their lowest levels in a decade last year.

The Biden administration is now attempting to reverse course. While the new president's flurry of executive orders promoting a unified national and international strategy to tackle climate change have made headlines, his nascent efforts to restore the EPA's ability to use its full range of enforcement powers have received less attention. After Biden signed an executive order instructing federal agencies to "hold polluters accountable," the Department of Justice, or DOJ, retracted nine Trump policy documents last month.

In part, those Trump-era policies restricted the EPA's ability to permit polluters to make significant investments in community remediation projects in exchange for resolving law enforcement actions against them. The DOJ noted that this restriction was a departure from longstanding policy and a possible impediment to the "full exercise of enforcement discretion." The idea is that flexible enforcement agreements allow the EPA to ensure that polluters mitigate the harm they cause by funding cleanup, air and water quality monitoring, and other restorative efforts.

"It is reassuring to see a quick return to the rule of law at DOJ," said Cynthia Giles, who was in charge of enforcement at the EPA during the Obama administration. "Getting these barriers out of the way lets EPA and DOJ do their job: making sure environmental standards are protecting people."

As a new administration begins to confront the Trump EPA's legacy, it now faces the herculean task of restoring the agency's ability to adequately enforce environmental laws. Giles, other former enforcement officials, and environmental advocates who spoke to Grist said that the Biden EPA has a long road ahead of it. Not only must the agency restore

staffing — which under Trump plummeted to levels not seen since the Regan years — but it also needs to increase the number of inspections it conducts, create frameworks for innovative new settlement agreements that hold polluters accountable and benefit communities, and support citizen suits against polluters. Many of these changes will roll back Trump-era policies, but some — such as making data available to support citizen suits and ramping up inspections — are new initiatives that advocates say are required to tackle a long-term slump in enforcement.

"It won't be easy," said Tim Whitehouse, who was a senior EPA attorney under former President Bill Clinton and is now executive director of the nonprofit Public Employees for Environmental Responsibility. In the wake of the Trump administration, according to Whitehouse, the EPA has "become more and more timid" about pursuing inspections without the permission of state governments. In 2019, the Trump administration adopted a "no surprises" policy that meant EPA inspectors would no longer show up at facilities without first notifying state environmental agencies. Environmental advocates feared that the policy would result in facilities getting unprecedented advance notice of inspections, particularly in states where industrial polluters and regulating agencies have close relationships. Whitehouse told Grist that such practices severely limit the EPA's ability to collect the evidence necessary to build cases against polluting companies.

In a series of memos, the Trump EPA also gave states more authority to implement their own enforcement programs. The deference to individual states is a shift away from vigorous enforcement at the EPA, according to Whitehouse. Sometimes that's not apparent at first glance; after all, environmental agencies are on the front lines of enforcing many of the nation's most important clean air and water rules. The EPA functions as a backstop, ensuring that the states are enforcing laws appropriately and stepping in to take on bigger cases.

In a 2019 memo promoting "effective partnerships" between states and the EPA, however, the federal agency shifted that balance of power in favor of the states. "The EPA will generally defer to a state as the primary implementer of inspections and enforcement," the memo states, excepting a handful of cases in which it will retain authority, such as when the states request assistance or don't have adequate resources.

Giles, the former EPA enforcement chief, described the policy as essentially giving states a veto option. "There was a lot of language and words around this, but essentially it said states can can veto EPA enforcement action," she told Grist. "It doesn't use the word 'veto.' But everyone that works in enforcement knows what it means. Nobody was confused; they understood."

Other policy changes also contributed to what Giles called the Trump administration's "sand-in-the-gears" approach to environmental enforcement. In another memo, the EPA made it more difficult for regional enforcement personnel to investigate environmental violations. The guidance document instructed staff to minimize transaction costs for companies and to "consider whether each piece of information requested (or each question) is truly necessary." The memo also instructed staffers to watch their tone when collecting information about a potential violation: "The tone of information requests should be polite, and should thank the recipient in advance for its cooperation."

In 2017, the Trump EPA announced that it wouldn't inspect some of the largest power plants and industrial facilities to verify emissions estimates and would only take enforcement action if a facility had been in operation for at least five years. Separately, it also rescinded Obama-era policies that encouraged EPA staff to require polluters to set up sophisticated air quality monitoring systems as part of settlement agreements and use qualified third parties to verify compliance.

While none of these policies alone significantly undermined enforcement, their combined effects gummed up the agency's ability to pursue polluters, according to Giles. The result was a "precipitous cliff-like fall off in cases," she said. "[The Trump administration] made no secret of the fact that they were opponents of enforcement."

From October 2015 through September 2017 — the fiscal years that overlap most closely with the final two years of the Obama administration — the EPA collected almost $8 billion in penalties. But in the following two years, that number

fell to just $432 million. Analyses by nonprofit groups also show that the Trump administration's enforcement slowdown led to significantly fewer investments in cleanup efforts by polluters.

A photograph of President Donald Trump listening as Environmental Protection Agency Administrator Andrew Wheeler speaks during an event on the environment in the East Room of the White House, Monday, July 8, 2019, in Washington. Under former administrators Andrew Wheeler (pictured above) and Scott Pruitt, the Trump EPA scaled back its enforcement of environmental laws, deferring to states and industries.

The diminishment of enforcement under Trump is part of a longer-term trend. Since the 1990s, the number of cases initiated and penalties collected by the EPA have been steadily declining. That downward trend has been true under both Republican and Democratic administrations. According to a report by the Environmental Data and Governance Initiative, a nonprofit tracking the EPA's enforcement work, the number of new civil cases opened by the agency in 2018 was the lowest it's been since 1982. Civil fines that year were at their lowest total since 1994. Those declines may be tied to reduced funding: Between 2008 and 2018, Congress cut the EPA's budget by 16 percent.

Whitehouse said that the deprioritization of enforcement can largely be attributed to powerful industries increasingly controlling the levers of power in government. Even prior to the Trump administration, researchers were finding evidence of regulatory capture at the EPA, meaning that the agency was often staffed with former industry executives. This revolving door between industry and government could mean that polluting businesses get a more prominent seat at the regulatory table than others. One 2010 study, for instance, found that the EPA communicated with industry representatives an average of 84 times before proposing any given new air quality rule. By comparison, the agency communicated with public interest groups less than one time per rule, on average.

"We've seen more and more regulatory capture of our different environmental agencies," said Whitehouse. "I attribute that to the gradual erosion of EPA enforcement programs, which accelerated greatly under President Trump but has been at least 20 years in the making."

In order to restore enforcement, the Biden administration needs to appoint EPA and DOJ leaders who clearly signal that they will enforce laws that protect public health and the environment, Whitehouse said. President Biden has nominated Michael Regan, former head of the North Carolina Department of Environmental Quality, to lead the EPA. Regan's tenure in North Carolina was marked by an increase in the state agency's inspection capacity and the establishment of new environmental justice measures — but also, according to critics, by Regan's deference to many of the wishes of the state's major polluters. Biden has not yet nominated an assistant administrator to head the EPA's enforcement division. That position will require Senate confirmation.

Kelsey Breseman, an Environmental Governance and Data Initiative researcher, said that the Biden administration "needs to go pretty far beyond restoration to back before Trump."

"Our country is more populous than it was in the Obama era, and the climate crisis is more urgent," she said. "We need this new administration to give us a reason to believe in our future."

Agency

A different kind of CERAWeek kicks off

https://www.politico.com/newsletters/morning-energy/2021/03/01/a-different-kind-of-ceraweek-kicks-off-793662

By KELSEY TAMBORRINO 03/01/2021 10:00 AM EST
Presented by Chevron

QUICK FIX
— A changed energy industry will converge today for the kick-off of the annual CERAWeek conference, where a raft of Biden administration officials and regulators will speak about the social, regulatory and financial impact of climate change.

— Three nominees key to President Joe Biden's environmental agenda will testify on the Hill this week as they move toward confirmation to EPA, the Energy Department and the Council on Environmental Quality.

— The Biden administration unveiled an interim social cost of carbon on Friday, quantifying the economic and societal damage from greenhouse gas emissions.

WELCOME TO MONDAY! I'm your host, Kelsey Tamborrino. Shane Schulz of QEP Resources got the trivia win for naming the three other Energy secretaries, besides Jennifer Granholm, who also served as governors. Rick Perry was the governor of Texas, Bill Richardson of New Mexico and James Edwards of South Carolina. For today: In the 117th Congress, what's the average age in the Senate? Send your tips and trivia answers to ktamborrino@politico.com.

Check out the POLITICO Energy podcast — all the energy and environmental politics and policy news you need to start your day, in just five minutes. Listen and subscribe for free at politico.com/energy-podcast. Today's episode: Gauging the social cost of carbon

DRIVING THE DAY
THE ENERGY CONFERENCES ARE A-CHANGIN': A year ago the preeminent U.S. energy industry conference, CERAWeek by IHS Markit, called off the annual event as the coronavirus pandemic shut down the global economy. Today, the five-day conference returns entirely online — but that's not the only noticeable difference from the conferences of the past.

This year's lineup features a parade of Democrats and Biden administration officials who will push the new president's goals to speed the energy transition, decarbonize the economy and tighten rules around oil and gas production, Pro's Ben Lefebvre reports this morning.

It's likely that oil and gas industry executives will hear more from U.S. officials about methane emissions and green investment strategies this week than in the all of the previous four years. Attendees, for instance, will hear from special climate envoy John Kerry talk about the United States' plans to lead the global effort to fight climate change.

"There's clearly been an evolution as the focus on emissions has become more intense," Dan Yergin, the industry's leading historian and the vice chair of research firm IHS Markit, told Ben. "In the past, maybe one or two policy makers would speak. If I think over the past decade, many more policy people and ministers from around the world are participating. The focus has shifted from supply and energy security to emissions. I think we've seen a growing role of financial players at the conference. The world has turned."

On the agenda: Indian Prime Minister Narendra Modi will deliver a keynote speech, as will CEOs from energy giants around the globe. Also set to speak: Newly confirmed Energy Secretary Jennifer Granholm; national climate adviser Gina McCarthy; Allison Herren Lee, Biden's acting chair of the SEC; Andrew Light, the Energy Department's acting assistant secretary for international affairs; Rostin Behnam, acting chairman for the Commodity Futures Trading Commission; and FERC Chair Richard Glick.

ON THE HILL
NOMINEES HIT THE HILL: Senate committees will hold confirmation hearings this week for Brenda Mallory to lead the White House Council on Environmental Quality, Janet McCabe to be deputy EPA administrator and David Turk to be

deputy Energy secretary. Mallory and McCabe will appear before the Senate Environment and Public Works Committee on Wednesday and Turk before the Energy and Natural Resources Committee on Thursday.

Ahead of the EPW hearing, Republican leaders who served at EPA and CEQ under the administrations of President George H.W. Bush and President George W. Bush wrote to the committee to "enthusiastically support" Mallory. "We know Brenda to be an exemplary candidate who possesses the deep domain expertise, open mind and leadership skills needed to be a strong and effective Chair of the Council," they write. The letter is signed by former EPA chiefs William Reilly, Christine Todd Whitman, Michael Leavitt and Stephen Johnson; former Deputy EPA Administrators Linda Fisher and Marcus Peacock; former CEQ Chair James Connaughton; the EPA chief of staffs from 2001-09 and general counsels from 2003-09.

HOUSE PASSES COVID RELIEF PACKAGE: The House approved President Joe Biden's $1.9 trillion pandemic rescue plan, H.R. 1319 (117), early Saturday morning, sending the measure to the Senate, POLITICO's Caitlin Emma and Sarah Ferris report. The sprawling measure — which passed the House in a 219-212 vote — would provide $4.5 billion to the Low-Income Home Energy Assistance Program, which aids families in affording utilities. It would also allocate $100 million to EPA to "address health outcome disparities from pollution and the COVID–19 pandemic" — $50 million of which would be doled out through environmental justice grants and $50 million for air pollution monitoring and research.

PATH FORWARD ON LANDS: House Natural Resources Chair Raúl Grijalva called ME shortly after the House passed its sweeping lands bill, H.R. 803 (117), on Friday to say he expected the senators from Arizona, Colorado and California will play a critical role in determining whether the package advances through the Senate. "There is enough in the legislation up and down the line to be attractive to too many of the senators," he said. "So, I'm looking forward to it." He said he has a meeting set up with Arizona Sen. Mark Kelly, hopes to schedule one with Arizona Sen. Kyrsten Sinema and plans to meet with Senate Energy Chair Joe Manchin.

It's an early signal of the importance of climate change and public lands to the Democratic agenda. "By putting it on, you establish that it is an important issue going forward and the role that these lands in this instance, and oceans in the future, play in trying to meet the agenda and meet the commitments that have been made around climate change," he said.

DON'T MISS "THE RECAST": Power dynamics are changing. "Influence" is changing. More people are demanding a seat at the table, insisting that all politics is personal and not all policy is equitable. "The Recast" is our new, twice-weekly newsletter that breaks down how race and identity are recasting politics, policy, and power in America. And POLITICO is recasting how we report on this crucial intersection, bringing you fresh insights, scoops and dispatches from across the country, and new voices that challenge "business as usual." Don't miss out on this important new newsletter, SUBSCRIBE NOW. Thank you to our sponsor, Intel.

AROUND THE AGENCIES

ARMY CORPS CONSIDERS PEBBLE APPEAL: The Army Corps of Engineers has officially deemed complete the Pebble Limited Partnership's request for an administrative appeal of its rejection of permits for the Pebble Mine in Alaska, the company announced on Friday. The agency now has around 90 days to consider the company's appeal and make a decision, though it can extend that deadline. The Trump administration last year rejected the mine after concluding that its mitigation plan fell short of being able to offset the mine's environmental impacts.

Meanwhile, Alaska Gov. Mike Dunleavy said the Army Corps has rejected the state's own administrative appeal after determining it doesn't have standing. "This is another example of the federal government imposing a flawed decision that blocks Alaska's ability to responsibly develop its land and resources," Dunleavy said in a statement.

SOMETHING TO TALK ABOUT: Gina McCarthy, Transportation Secretary Pete Buttigieg and National Economic Council Director Brian Deese met virtually with airline executives Friday to discuss reducing carbon emissions and using biofuels, among other issues. White House officials were "grateful and optimistic to hear airline leaders share information about

the industry's ongoing and future efforts to address climate change, and they offered the Administration's support to strengthen and advance the airlines' climate goals," according to a readout.

Industry says: Airlines for America, an industry trade group, released a statement after the meeting pledging to work with the Biden administration on climate goals and highlighting its members' commitment to a 50 percent reduction in CO2 emissions by 2050, as compared to 2005 levels. Delta and American separately announced Friday that they had partnered with Deloitte to reduce emissions through sustainable fuel use.

And yet: It isn't enough, according to at least one environmental group. "Biofuels are false solutions that don't decarbonize air travel," according to Clare Lakewood, climate legal director for the Center for Biological Diversity. "Real action on aircraft emissions requires phasing out dirty, aging aircraft, maximizing efficiencies and funding the rapid development of electrification."

CLIMATE CALCULATIONS: Biden restored an Obama-era calculation on the economic cost of greenhouse gases on Friday, making it easier for his agencies to approve aggressive actions to confront climate change, POLITICO's Lorraine Woellert and Zack Colman report. The administration, however, stopped short of boosting the cost figure to higher levels that economists and climate scientists say are justified by new research — at least for now.

The interim figure — $51 for every ton of carbon released into the atmosphere with a 3 percent discount rate applied — is on par with a price based on analyses undertaken between 2010 and 2016 under former President Barack Obama.

It's also temporary: A new Interagency Working Group on the Social Cost of Greenhouse Gases is required to issue a final number by January. "A more complete update that follows the best science takes time. This is why we are quickly restoring the prior estimates as an interim step," Heather Boushey, a member of the Council of Economic Advisers, wrote in a blog post.

TEXAS

GRANHOLM: TEXAS SHOULD LINK GRID TO REST OF THE COUNTRY: Newly minted Energy Secretary Jennifer Granholm told NPR on Friday that Texas might face fewer problems if it joined its grid with the larger U.S. power network and ended its decades of electricity self-reliance. "I think the country would welcome Texas being at least connected to the national grid in some way, shape or form that allows for its neighbors to help," she said. Texas has long pledged its independence from the rest of the grid, exempting its market from federal regulation. But the power problems it suffered for five days in February might have been ameliorated with more wires to the rest of the United States. FERC, committees in the House and Senate, the Texas legislature, and Texas Attorney General Ken Paxton have all launched investigations into last month's blackouts.

— Granholm also told The Washington Post that she expects the administration's upcoming jobs package to include a "significant commitment to investing in the national grid, both expanding the lines for transmission, as well as investing in the resiliency of the grid."

President Joe Biden and first lady Jill Biden walk toward the Marine One on the South Lawn prior to a departure from the White House Feb. 26, 2021 in Washington, D.C. President Biden and the first lady are traveling to Houston to see the damages and the recovery efforts from a deadly winter snowstorm and visit a FEMA Covid-19 vaccine site.
President Joe Biden and first lady Jill Biden walk toward the Marine One on the South Lawn prior to a departure from the White House Feb. 26, 2021 in Washington, D.C. | Photo by Alex Wong/Getty Images

CONSOLER-IN-CHIEF VISITS LONE STAR STATE: Biden visited the emergency operations center in Harris County, Texas, as well as a food bank on Friday. He brought with him Deputy National Security Adviser Elizabeth Sherwood-Randall, who served as deputy Energy secretary in the Obama administration. "One thing we know for sure is we cannot treat what happened in Texas and in the whole region, in the South, as an isolated event," she told reporters. "The impacts reflect our shared vulnerabilities to extreme weather events and other threats, and the need for collective action to

modernize and harden our critical infrastructure across the country so that we can meet the full spectrum of challenges that we will face in the future."

BEYOND THE BELTWAY

A QUANDARY: Trains are in general the most fuel efficient way to carry freight, and environmentalists and policymakers often argue that the U.S. should be trying to move more freight by rail. At the same time, it's an industry that relies heavily on shipping coal, and has been involved in funding climate denial for decades, as illustrated by a 2019 Atlantic article.

In a new report, the Association of American Railroads, the main group representing the country's biggest freight rail companies, makes the case that they're part of the solution, not the problem. "The AAR and the rail industry recognize that the climate is changing. If action is not taken, climate change will have significant repercussions for the planet, our economies, our society, and even day-to-day railroad operations," the report says.

The thrust of their proposals is simple, while also inherently self-serving: push freight traffic off the roads, and onto the tracks. They argue that if 10 percent of the freight shipped by the largest trucks were moved by rail instead, greenhouse gas emissions would fall more than 17 million tons annually. AAR's suggested methods include using market incentives to encourage shipping through lower-emissions modes, boosting the gas tax and eventually switching to a vehicle miles traveled fee, and imposing a "graduated emissions surcharge" to make higher-emitting vehicles pay more.

Other points include boosting research for alternative fuels and carbon capture (which the railroads argue they can be involved in by helping transport carbon to permanent storage sites).

Wordplay: The 2019 Atlantic article noted that AAR hadn't mentioned climate change in any public statements in recent years, and that the term didn't show up on the group's website. That's obviously not the case anymore, and it's notable what word doesn't show up anywhere in the climate report: coal, the commodity that in 2019 made up nearly a third of freight railroad's tonnage.

NGOs CALL ON CEOs: The leaders of a dozen environmental nonprofits signed onto an open letter, released today, asking America's CEOs to adopt "a science-based climate advocacy agenda" that includes publicly supporting a 2030 goal for the U.S. under the Paris agreement and advocating for legislation and regulations to cut climate pollution on a path to net zero by 2050. The letter also calls for aligning their trade associations' lobbying with the net zero by 2050 path, including withholding dues from trade groups that do not.

Environmental Justice

Biden administration promises focus on environmental justice
https://www.wbrz.com/news/biden-administration-promises-focus-on-environmental-justice/

March 01, 2021 8:07 AM in NewsSource: Associated PressBy: Associated Press
When President Joe Biden made environmental protection a key element of his campaign, he promised to overhaul the federal office that investigates complaints from people in minority communities who believe they have been unfairly harmed by industrial pollution or waste disposal.

Although the Environmental Protection Agency acknowledges that disadvantaged communities in America are disproportionately affected by pollution, hundreds of complaints sent to its civil rights office since the mid-1990s have only once resulted in a formal finding of discrimination.

The situation has provoked criticism from the U.S. Civil Rights Commission, the EPA's own Office of Inspector General and citizens who have filed complaints that sometimes languished for years — or decades.

Under Title VI of the 1964 Civil Rights Act, states, cities and other entities that receive federal funds are prohibited from discriminating because of race, color or national origin. That means citizens bearing the brunt of industrial pollution can bring a complaint if federal money is tied to the project.

In Uniontown, Alabama — a mainly Black town of 2,200 — residents complained to the EPA in 2013 about the Alabama Department of Environmental Management's oversight of a huge landfill containing 4 million tons of coal ash that residents blame for respiratory, kidney and other ailments. Five years later, the EPA dismissed the complaint, saying residents hadn't proven the landfill caused their health problems.

The U.S. Civil Rights Commission called the dismissal of the Uniontown complaint "another distressing step in the wrong direction" by the EPA office.

The outcome was typical. In three decades of fielding complaints, EPA's civil rights office has almost never found pollution was adversely affecting human health. And without such a finding, the agency won't even consider whether illegal discrimination occurred.

Marianne Engleman-Lado, who was recently appointed by the Biden administration to the EPA's office of general counsel, had helped Uniontown residents with their case. She maintains the way the EPA evaluates such complaints makes it nearly impossible to prevail because proving with scientific certainty that pollution is causing disease is a nearly insurmountable obstacle.

Ben Eaton, a Perry County Commissioner involved in the Uniontown complaint, said attorneys warned that discrimination claims usually go nowhere, but residents felt their evidence — including photos and videos — was compelling. "What's the use of having these agencies," he said, "if they're not going to do the job?"

Residents of a predominantly Black and Latino community in Oakland, California were similarly disappointed with results of their civil rights complaint over air pollution from ships and truck traffic at the busy Port of Oakland.

Margaret Gordon, a co-founder of the West Oakland Environmental Indicators Project, said her group did not have a seat at the table when EPA hammered out an informal resolution with the port. Air pollution is still a problem, she said, although port officials are now more willing to listen to community members.

Lilian Sotolongo Dorka, who heads the EPAs office of external civil rights enforcement, touted the 2019 Oakland resolution as an "extremely effective" example of the difference her office is making in people's lives.

But Richard Grow, who worked at EPA for 40 years before retiring in 2019 and was one of the agency's negotiators, agrees with Gordon's assessment.

"We put forth a number of very practical ... solutions and recommendations and they just said 'No,'" Grow said. When he reported the port's and city's position to Dorka's office, he said he was told nothing could be done.

The office had no further comment, and the port issued a statement saying it is committed to continuing a dialogue with the community.

The EPA has the power to withdraw funding from groups that discriminate, although it has never used that power. Dorka defends her office's record, saying it has eliminated a chronic backlog of complaints.

"I disagree very significantly with the conclusion that you can judge our civil rights program by the number of formal findings (of discrimination) we've made," she said, noting the office is required by regulation to seek informal resolutions wherever possible.

U.S. Sen. Cory Booker (D-New Jersey) is among those who think EPA's civil rights office should do more. During confirmation hearings this month for Michael Regan, Biden's nominee for EPA administrator, Booker spoke of meeting Alabama citizens suffering from tropical diseases they attribute to sewage pollution, children with elevated lead levels in his own state, and families in Louisiana's so-called "cancer alley" who felt abandoned by their government.

The EPA's civil rights office "has been eviscerated over the years," the African-American senator told Regan. "You're not even equipped, in my opinion, to actually begin to fight against these issues that affect millions of Americans."

Regan promised to make environmental justice a top priority, including "restructuring and reorganizing" the office of civil rights, which has 12 fulltime employees. "We will need additional resources. ..." he said.

Critics concede that Dorka, who took over the office of external civil rights under President Barak Obama, has made some progress, including producing a case resolution manual to guide investigations.

Obama's last day in office marked the only time Dorka's office issued a formal finding of discrimination — in a complaint filed 25 years earlier over the Genesee Power Plant outside Flint, Michigan. The agency dismissed allegations that the plant's emissions hurt Black residents, finding insufficient evidence of harm to their health. However, the EPA did find residents were not given a fair opportunity to participate in the permitting process.

Dorka said progress has continued under the Trump administration.

EPA spokeswoman Lindsay Hamilton said that "The new leadership team will be working closely with career colleagues ... as well as receiving input from stakeholder groups, in an effort to bolster the agency's capabilities to deliver on our environmental justice and civil rights missions."

Environmental justice advocates say the changes need to be significant.

"There are still places where people don't have access to safe drinking water, where they live in close proximity to hazardous sources," said Vernice Miller-Travis, a longtime advocate and cofounder of WE ACT for Environmental Justice. "This could be a moment of real sea change in terms of how the EPA is not just paying lip service to civil rights."

Pollution

After Months of Delay, EPA Quietly Takes Steps Toward Community Outreach on Ethylene Oxide Risks; OIG Once Again Urges EPA to Expedite Community-Specific Notifications
https://www.jdsupra.com/legalnews/after-months-of-delay-epa-quietly-takes-5216637/

Key Takeaways

What: In late January, EPA took the initial step of posting status reports on 25 facilities previously identified as high-risk based on known ethylene oxide (EO) emissions and facility location. EPA has committed to making community notifications regarding EO risks by May 31, 2021. On February 22, 2021, the EPA's Office of the Inspector General (OIG) sent a letter to Acting Administrator Jane Nishida urging reconsideration of Administrator Wheeler's January 4, 2021 decision that community outreach and notification regarding EO risks need not be immediate. Reconsideration could trigger community outreach on a shorter timeline and trigger concomitant community concerns (and, potentially, litigation) regarding EO.
Who's Affected?The 25 facilities for which EPA prepared a report. More broadly, all facilities that emit EO, including commercial sterilizers, EO producers, miscellaneous organic chemical manufacturers, hospital EO sterilizers, polyether polyols producers, and synthetic organic chemical manufacturers.
What Should I Do?Prepare now to mitigate potential enforcement and litigation risk. Develop a strategy to reduce risk by prioritizing facilities in high-risk communities, identifying potential actions to reduce EO emissions, and addressing environmental justice concerns.

Background

As earlier reported, last March the Office of the Inspector General (OIG) called for EPA to issue health-related warnings to residents living near 25 "high-priority" EO-emitting facilities across the country. OIG identified the facilities using the 2014 National Air Toxics Assessment (NATA), updated in 2018 to incorporate the controversial EO IRIS risk assessment. EPA developed the NATA to screen for elevated cancer risks from air pollutants, including EO.

On May 15, 2020, EPA's Office of Air and Radiation (OAR) pushed back on the OIG request, arguing that the NATA is a screening tool only, with inherent uncertainties. OAR reasoned that before community notifications could occur, additional technical analysis and coordination with state environmental agencies was necessary.

In its August 19, 2020 response, OIG strongly disagreed, demanding that OAR make immediate notifications while during preparations of additional study. On December 2, OAR proposed a corrective action plan, committing to notification deadlines by May 31, 2021. Ultimately, the intra-agency dispute was mediated before Administrator Wheeler, who sided with OAR.

Recent Developments

Despite this apparent resolution, in late-January, EPA quietly posted status reports on the first wave of 25 "high risk facilities" identified on its website page devoted to EO measures. EPA claimed the reports were posted "in part, in response to the EPA Office of Inspector General's March 31, 2020, Management Alert."

At this time, the facility reports are akin to status updates and provide information on the additional technical reviews, actions to date, and ongoing or planned community outreach. The reports do not include emissions data or updated risk characterizations for the facilities.

Separately, on February 22, 2021, the OIG sent a letter to Acting Administrator Jane Nishida urging reconsideration of Administrator Wheeler's decision that community-specific notification was not necessary. In part, the OIG asserts that Administrator Wheeler's decision was based on information not previously disclosed to the OIG.

While the immediate significance of notification are unknown and would not appear to have immediate enforcement consequences, the NATA and the EO IRIS risk assessment are already ample fodder for lawsuits by states and the plaintiffs' bar against EO emitters. EPA's anticipated notifications this spring (or sooner if EPA reconsiders OIG's request) could prompt enhanced scrutiny, particularly if they provide additional emissions data or define community cancer risks.

Next Steps

Affected companies should get ahead of the issue now to manage the risks posed by EO litigation and enforcement cases. Given the EPA's current activities and increased attention from a new administration, now is the time to assess and mitigate company risk in a holistic, proactive, and community-inclusive manner.

Companies should consider conducting a privileged assessment in order to receive legal advice on risk mitigation. The assessment would comprise of an expert review of EO processes to identify EO stack emissions and fugitive emissions points; evaluating whether readily available equipment upgrades could reduce EO emissions, including fugitive emissions; assessing whether there are any operations in or near an environmental justice community and determining whether additional engagement with the community and other stakeholders is needed; analyzing, under privilege, all compliance monitoring data submitted to agencies, to determine how those data may be viewed in a litigation or enforcement context; and concluding with a proactive litigation strategy that reduces risk.

*** Updated on February 26, 2021 to include the OIG's letter to Acting Administrator Jane Nishida requesting a reconsideration of Administrator Wheeler's decision to reject their recommendation. ***

Superfund

N.Y. Submits Revised Plan To Meet Chesapeake Cleanup Goals
https://patch.com/maryland/annapolis/n-y-submits-revised-plan-meet-chesapeake-cleanup-goals

New York has submitted a revised Chesapeake Bay cleanup plan which, unlike the one completed in 2019, meets the state's goals.
Chesapeake Bay Journal, News Partner
Posted Mon, Mar 1, 2021 at 9:46 am ET
Donna Morelli

New York has submitted a revised Chesapeake Bay cleanup plan which, unlike the one completed in 2019, meets the state's goals for helping to reduce nutrient pollution in the Bay — at least on paper.

The plans submitted by New York and Pennsylvania two years ago failed to show how the states would meet their pollution control goals by the 2025 deadline. New York's revised plan mostly closes that shortfall not through additional actions, but by recalculating the amount of nutrients expected to be discharged from its wastewater treatment plants.

The state said its new calculation methodology better reflects actual observed conditions and takes into account the shrinking population in its portion of the Bay watershed, which contributes to reduced wastewater flows.

A review by the U.S. Environmental Protection Agency released in January agreed that the revised plan would meet the state's Bay obligations, though it asked the state to provide more documentation about the methodology behind its revised calculations.

The EPA's review continued to say, as it did for New York's original cleanup plan, that the state should provide more detail about how it would pay for and achieve the significant nutrient reductions the state anticipates from agriculture and developed lands.

States in the Bay watershed have been working since 2010 toward a 2025 deadline for reducing the amount of nutrients reaching the Chesapeake to help clear its water and reduce oxygen-starved dead zones.

In 2019, all of the states completed updated cleanup plans, but those submitted by New York and Pennsylvania did not achieve their share of the 2025 cleanup goals.

That shortcoming spurred Maryland, Virginia, Delaware, the District of Columbia, Chesapeake Bay Foundation and others last year to file a suit against the EPA in an effort to get the agency to require the two states to write adequate cleanup plans and do more to implement them.

Message

From: Caughie, Nuala [Caughie.Nuala@epa.gov]
Sent: 2/26/2021 9:54:42 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips: Afternoon Edition 2/26/2021

Water

USEPA Advances Toward Regulation of PFAS in Drinking Water
Public Comments Needed for EPA about LANL Industrial Wastewater Discharge Permit
Stormwater Enforcement: U.S. Environmental Protection Agency and Summerville, South Carolina, Concrete Block Manufacturing Facility Enter into Expedited Settlement Agreement

Environmental Justice

EPA Seeks to Avoid Some Claims in Lawsuit Over River PCB Plan
This EPA mapping tool could reshape environmental justice

Policy

93rd Arkansas General Assembly: Petroleum Storage Tank Trust Fund Balance Revision

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USEPA Advances Toward Regulation of PFAS in Drinking Water

https://www.jdsupra.com/legalnews/usepa-advances-toward-regulation-of-9553294/

Climate change and environmental justice are currently dominating the conversation in the environmental legal community, but 2021 promises to be an extremely active year for one of the most challenging environmental issues of this era — the emergence of per- and polyfluoroalkyl substances (PFAS) as a significant public health concern. The U.S. Environmental Protection Agency (USEPA) demonstrated its continued commitment to implementing the national PFAS Action Plan by announcing on February 22 two important steps toward establishing federal drinking water standards for PFAS compounds under the Safe Drinking Water Act (SDWA).

First, on January 14, USEPA issued a pre-publication copy of the proposed fifth update to the Unregulated Contaminant Monitoring Rule (UCMR 5), which identifies unregulated compounds to be monitored by Public Water Systems[1] (PWSs). The UCMR 5 will require most PWSs around the country to test for and monitor 29 PFAS compounds in drinking water.[2] The document was subsequently re-issued on February 22, signed by Jane Nishida, named by President Biden to serve as acting administrator until a new administrator is confirmed.[3] The re-issued document appears to be identical to the January 14 version. This new version has been submitted for publication in the *Federal Register*.

Second, on January 15, USEPA issued the pre-publication copy of its "Announcement of Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List" (Regulatory Determination 4), which set forth USEPA's final determination to regulate two of the most well-studied PFAS compounds, perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA). In addition, Regulatory Determination 4 announced USEPA's intention to move forward with regulatory determinations on other PFAS compounds on the Candidate Contaminant List (CCL), and to render such determinations prior to the applicable statutory deadlines under the SDWA, where sufficient information is available to do so. Similar to the UCMR 5, Regulatory Determination 4 was re-issued on February 22, signed by Acting Administrator Jane Nishida, and appears to be identical to the January 15 version. This re-issued version has been submitted for publication in the *Federal Register*.

UCMR 5 Establishes Monitoring Requirements for 29 PFAS Compounds

The SDWA establishes standards for drinking water in PWSs, including "maximum contaminant levels" (MCLs), which are the enforceable primary drinking water standards established to protect human health. PFAS compounds are currently classified as unregulated contaminants since no federal standards have been established for any PFAS compounds. The SDWA requires USEPA to follow a multistep, risk-based approach for determining which contaminants should be subject to drinking water standards.

First, USEPA is required to publish a CCL every five years, identifying contaminants that are not subject to any proposed or promulgated drinking water regulations, but which are known or anticipated to occur in PWSs, and which may require regulation under the SDWA.[4] Second, every five years, USEPA must identify not more than 30 unregulated contaminants that must be monitored by PWSs to determine the frequency of occurrence of those contaminants in drinking water systems; this is the purpose of the UCMR program.[5] Third, USEPA is required to determine, every five years, whether or not to regulate at least five contaminants from the CCL.[6]

While no final federal drinking water standards have been issued for any PFAS compounds,[7] USEPA has been moving forward with its evaluation of certain PFAS compounds under its SDWA authority. The third Unregulated Contaminant Monitoring Rule (UCMR 3), published May 2, 2012, included six PFAS compounds on the CCL to be monitored by PWSs, including:

- perfluorooctanesulfonic acid (PFOS)
- perfluorooctanoic acid (PFOA)
- perfluorononanoic acid (PFNA)
- perfluorohexanesulfonic acid (PFHxS)
- perfluoroheptanoic acid (PFHpA)
- perfluorobutanesulfonic acid (PFBS)

The newly proposed UCMR 5 will expand the list of monitored PFAS compounds to 29.[8] Most PWSs will be affected by this proposed rule and will be required to monitor these compounds, subject to the availability of adequate Congressional appropriations and appropriate laboratory capacity.[9] The monitoring information required under UCMR 5 will provide USEPA with data on the national occurrence of the identified contaminants in drinking water systems, which will be used, along with other available information, to inform USEPA's future regulatory efforts — including the potential establishment of federally enforceable drinking water MCLs for any of the 29 PFAS compounds identified in the rule, where the data supports the establishment of a regulatory standard.

Regulatory Determination 4: Final Determinations on PFOA and PFOS

While the UCMR 5 may signal a possibility of future regulation for 29 PFAS compounds, Regulatory Determination 4 removes lingering doubt for two of them: PFOA and PFOS.

Section 1412(b)(1)(A) of the SDWA authorizes USEPA to regulate a contaminant in drinking water if the administrator determines that:

- the contaminant may have an adverse effect on the health of persons;
- the contaminant is known to occur or there is substantial likelihood that the contaminant will occur in [PWSs] with a frequency and at levels of public health concern; and
- in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by [PWSs].[10]

Once USEPA determines that a contaminant meets these criteria, USEPA initiates rulemaking to establish national primary drinking water regulations, or MCLs.

The fourth iteration of the Contaminant Candidate List (CCL 4) is currently in effect. Through Regulatory Determination 4,[11] USEPA has now explicitly determined that the criteria of SDWA § 1412(b)(1)(A) have been satisfied, thereby stating its intention to establish national primary drinking water standards for two CCL 4 compounds, PFOA and PFOS, under the SDWA. As a result, USEPA will soon start the lengthy process[12] of proposing and promulgating drinking water regulations that set MCLs for these two contaminants. Pursuant to the SDWA, USEPA will have 24 months from the date of Regulatory Determination 4's final publication to propose regulations for PFOA and PFOS, and then another 18 months to take action on final regulations. The final promulgation deadline may be extended by up to nine months.[13]

Accelerated Regulatory Consideration of Other PFAS Compounds

Perhaps as important as its decision to promulgate primary drinking water standards for PFOA and PFOS, in Regulatory Determination 4, USEPA also expressed its intention to move forward with its consideration of other PFAS compounds on an accelerated basis. Referencing the commitments made in the PFAS Action Plan and noting the progress made in developing data on PFAS compounds, USEPA states that it "will continue to prioritize regulatory determinations of additional PFAS in drinking water."[14] Thus, while the SDWA does not require USEPA to complete regulatory determinations for contaminants on the fifth CCL until 2026, it "is committing to making regulatory determinations in advance of the next SDWA deadline for additional PFAS for which the Agency has a peer reviewed health assessment, has nationally representative occurrence data in finished drinking water, and has sufficient information to determine whether there is a meaningful opportunity for health risk reduction for persons served by [PWSs]."[15]

Finally, in addition to the sampling being conducted for the 29 PFAS compounds included in UCMR 5, USEPA specifically notes that it is in the process of developing toxicity assessments on seven PFAS compounds, including: PFBS, PFBA, PFHxS, PFHxA, PFNA, PFDA, and HFPO-DA (GenX chemicals), all of which are currently scheduled to be completed by or perhaps in 2022. These are the PFAS compounds for which we are likely to next see regulatory action at the federal level.

Implications for the Regulated Community

UCMR 5 and Regulatory Determination 4 are clear signals that federal PFAS regulation is moving forward. Although only PFOA and PFOS have received affirmative determinations for SDWA regulation, USEPA has signaled that PFAS regulation remains a priority, and we can expect to see continued focus on the assessment and regulation of PFAS compounds in the months and years ahead. For example, USEPA solicited comment on contaminants for inclusion in CCL5 in October 2018 and is expected to move forward with a proposed CCL5 in the near future. That proposal may provide some insight as to whether USEPA will continue to view PFAS compounds individually from a regulatory standpoint, or whether the USEPA may shift to a more class-based regulatory approach.[16]

Troutman Pepper attorneys have been at the forefront of PFAS and emerging contaminant issues at the state and federal level for years. During the past year, PFAS has been the subject of our six-part webinar series. The most recent webinar in the series covered technical issues and chemistry. To read more about the firm's PFAS capabilities, please click here.

Public Comments Needed for EPA about LANL Industrial Wastewater Discharge Permit

http://nuclearactive.org/public-comments-needed-for-epa-about-lanl-industrial-wastewater-discharge-permit/

The federal Environmental Protection Agency (EPA) reopened the comment period for the industrial wastewater discharge permit for Los Alamos National Laboratory (LANL) facilities, including the Radioactive Liquid Waste Treatment Facility. https://www.epa.gov/nm/los-alamos-national-laboratory-lanl-limited-reopening-public-comment-period-npdes-permit-no The Clean Water Act requires a "discharge of [a] pollutant" in order for EPA to issue a permit. This facility has not discharged for at least a decade. A mechanical evaporator is used to treat the wastewaters. Nevertheless, EPA says it will issue a discharge permit for it.

If a facility that handles, treats and stores hazardous waste has a Clean Water Act permit, then it is automatically exempt from regulation by the hazardous waste laws, including the Resource Conservation and Recovery Act, or RCRA. Under this exemption, LANL can avoid meeting the more protective and stringent RCRA requirements.

For example, hazardous waste regulation requires a public permitting process for approval of new construction. LANL has avoided this requirement. EPA admits in its Fact Sheet that LANL has "a newly constructed main low-level [liquid] waste treatment facility, [] with an estimated operational start date in 2023." https://www.epa.gov/nm/los-alamos-national-laboratory-lanl-limited-reopening-public-comment-period-npdes-permit-no-0 There has been no public permitting process for this new facility. Instead, LANL and the New Mexico Environment Department have been using the New Mexico Water Quality Act regulatory definition of a "discharge permit modification" to allow the design and construction of the new facility without public knowledge. 20.6.2.7.P NMAC.

In particular, this new facility was not designed to meet the seismic risk on the Pajarito Plateau, as required by RCRA. The risk is significant. 40 CFR 264, Appendix VI to Part 264: *Political Jurisdictions in Which Compliance with § 264.18(a) Must Be Demonstrated,* including Los Alamos County. The new wastewater treatment facility is located across the street from the site of the Chemistry and Metallurgy Research Replacement Project. As you may recall, the proposed super Walmart-sized Nuclear Facility was canceled due to the seismic risk on the Pajarito Plateau. https://nuclearactive.org/obama-proposes-3-billion-for-nuclear-weapons-projects-at-lanl-in-lieu-of-cmrr-nuclear-facility/

Other RCRA requirements include assurances of the engineering integrity of the tank systems where waste treatment and storage take place, and completeness of the closure plan. These requirements are intended for review through a public process, enabling members of the public to advocate more protective levels of public health and safety assurances than provided in the Clean Water Act.

Please raise your voice in support of the New Mexico Environment Department recommendation that all discharge sites covered by the industrial wastewater permit be sampled for PFAS.

Recent LANL and New Mexico Environment Department sampling results show levels of PFAS, or "forever pollutants," in the canyons where LANL has historically discharged industrial wastewaters. The sampling results in the canyons covered by the EPA discharge permit show levels of PFAS contamination at 60 times and more than the recommended lifetime exposure limits.

Here are links to recent articles about PFAS in New Mexico, as well as background information and fact sheets. https://www.newmexicopbs.org/productions/groundwater-war/stories/ and https://www.sfreporter.com/news/2021/01/19/forever-pollutants/ More information about PFAS: https://www.env.nm.gov/pfas/main/ , https://www.env.nm.gov/pfas/about-pfas/ , https://www.env.nm.gov/pfas/data/ .

Comments are due to EPA on Monday, March 1st. Sample public comments that you can modify for your own use are available at nuclearactive.org. EPA comment for LANL industrial discharges 2-26-21

Stormwater Enforcement: U.S. Environmental Protection Agency and Summerville, South Carolina, Concrete Block Manufacturing Facility Enter into Expedited Settlement Agreement

https://www.jdsupra.com/legalnews/stormwater-enforcement-u-s-5449577/

Download PDF

The United States Environmental Protection Agency ("EPA") and Van Smith Block Company, LLC ("VSBC") entered into an Expedited Settlement Agreement ("ESA") addressing an alleged violation of the Clean Water Act Industrial Stormwater Permit related regulations. See Docket No. CWA-04-2020-0320(b).

The ESA provides that VSBC owns and operates a concrete block manufacturing facility ("Facility") in Summerville, South Carolina.

The Facility is stated to be identified by Standard Industrial Classification ("SIC") Code 3271. Facilities classified within SIC . . . 32 (except 323) . . . include SIC Code 3271. As a result, such facilities are considered to be engaging in "industrial activity" for purposes of 40 C.F.R. 122.26(b)(14).

EPA is stated to have issued an Information Request pursuant to Section 308 of the Clean Water Act on March 27, 2019, to the Van Smith Company, Inc. The Van Smith Company, Inc., is stated to have a common shareholder with VSBC.

EPA is stated to have reviewed the information provided in the Information Request along with aerial photography and topography and made certain observations about the Facility which included:

1. The Respondent has operated at the Facility since December 2003.
2. The Facility had outdoor industrial processes, including but not limited to, process equipment, material storage, and product storage with potential exposure and contribution to stormwater contamination.
3. The Facility is a concrete block manufacturing facility (SIC Code 3271) but had not submitted an NOI for coverage under the existing Permit.

The ESA provides that VSBC has violated Section 301 of the Clean Water Act by discharging stormwater from the Facility without proper authorization to waters of the United States.

The ESA assesses a civil penalty of $20,000 for the alleged violation.

A copy of the ESA can be downloaded here.

EPA Seeks to Avoid Some Claims in Lawsuit Over River PCB Plan

https://news.bloomberglaw.com/environment-and-energy/epa-seeks-to-avoid-some-claims-in-lawsuit-over-river-pcb-plan

Environmental groups can't pursue duplicate claims that the Environmental Protection Agency failed to issue a plan to limit the amount of PCBs in the Spokane River in Washington state, the agency told a federal court in the state.

The Sierra Club and Center for Environmental Law and Policy are pursuing those claims under the Clean Water Act, so their similar claims under the Administrative Procedure Act must be dismissed, according to the agency's filing in the U.S. District Court for the Western District of Washington.

The environmental groups and intervenor plaintiff Spokane Tribe of Indians say the EPA failed to review the Spokane River Regional Toxics Task Force's 2016 plan to reduce PCBs, or polychlorinated biphenyls, in the river.

They say the agency also failed to determine the Washington Department of Ecology has not submitted a total maximum daily load of PCBs in the river and failed to establish a TMDL as required.

If a state has abandoned a TMDL, that abandonment amounts to a "constructive submission of no TMDL," which requires the EPA to take action under the Clean Water Act.

The environmental groups have pleaded a Clean Water Act constructive submission claim, according to the agency. But the law is clear that where such a claim is available, plaintiffs can't "pursue duplicative arguments under the APA," the EPA told Judge Barbara J. Rothstein Thursday.

Because a constructive submission claim under the Clean Water Act is an adequate remedy, the court lacks jurisdiction over the groups' Administrative Procedure Act claims under the doctrine of sovereign immunity, according to the agency.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Law is operated by entities controlled by Michael Bloomberg.

The Department of Justice represents the federal government. Smith & Lowney PLLC represent the environmental groups. The Office of the Spokane Tribal Attorney represents the tribe.

The case is Sierra Club v. Hladick, W.D. Wash., No. 2:11-cv-01759, 2/25/21.

This EPA mapping tool could reshape environmental justice

https://www.eenews.net/stories/1063726157

No one had expected the judge to rule so quickly, let alone with such a striking condemnation of the Louisiana government's failure to recognize racial discrimination in its own inner workings.

The virtual proceedings began without fanfare: A lawyer representing a resident of Welcome, La., argued that the latest data from an EPA mapping tool should have prompted state regulators to take a deeper look at an approval for a massive petrochemical complex slated to be built in the predominantly Black community. Attorneys for the Louisiana Department of Environmental Quality and the project's developers rebutted the claims.

Then Judge Trudy White began to speak.

"Inherent, in the court's opinion, in a robust environmental analysis is the recognition that environmental racism exists and that environmental racism operates through the state's institutions," the judge for Louisiana's 19th Judicial District Court said in her ruling from the bench late last year.

She added: "Even though an institution may operate within the legal parameters, the institution may not be righteous or just in its actions."

Central to the case was data extracted from EJSCREEN, an EPA mapping tool that lawyers for opponents of the Formosa Plastics Group complex used to demonstrate that residents of Welcome, located in Louisiana's St. James Parish, face an elevated risk of cancer due to industrial activity in their community.

EJSCREEN has drawn the attention of the Biden administration, which has promised to bolster the EPA tool and has instructed the White House Council on Environmental Quality to build out similar technology.

The move could help environmental lawyers and community activists build stronger cases against oil and gas infrastructure, power plants, and other industrial facilities in minority and low-income neighborhoods.

Biden's EJSCREEN plans

The Biden administration has offered few details about how it plans to bolster EJSCREEN, but it has laid out broad goals for improving the tool and for building similar systems elsewhere in the federal government.

In a Jan. 27 executive order, President Biden gave CEQ six months to create a Climate and Economic Justice Screening Tool that would be used for annual publications of interactive maps of vulnerable communities.

Development of the geospatial tool would build "off EPA's EJSCREEN, to identify disadvantaged communities ... and inform equitable decision making across the federal government," according to a fact sheet accompanying Biden's order.

Julius Redd, a Beveridge & Diamond PC principal who helps companies engage with environmental justice concerns, said he was intrigued by the Biden administration's plans to release annual maps from the CEQ geospatial tool.

Regulated entities aren't always sure what constitutes an environmental justice community, due to varying definitions across jurisdictions, he said. Federal maps could offer some clarity.

Public maps identifying disadvantaged communities would be helpful for businesses organizing their own work and for knowing, "from an enforcement and policy-setting perspective, what the federal government will prioritize," Redd said.

CEQ has not yet announced any steps toward fulfilling Biden's directive, but just days into the new administration, EPA announced a series of updates to EJSCREEN, including the first addition of flood and sea-level rise data to the tool.

The update is an asset for the Tulane University Environmental Law Clinic, which represented the resident who challenged the LDEQ permit in White's court. The Tulane team is focused on facilities affected by Louisiana's severe storms and receding coastline, said Kimberly Terrell, director of community engagement at the clinic.

"You're talking about all these risks and impacts at these facilities," she said, "and we haven't even touched on what happens when a hurricane comes barreling down."

Frequent users of EJSCREEN broadly agree that the tool could benefit from additional data and more frequent updates.

Terrell noted that the Tulane team notched its legal victory against Formosa last year by relying on information from 2014.

"What's really concerning is that there's been a lot of plants permitted since 2014," she said. "Someday we'll know what the 2020 and 2021 levels of pollution-related cancer risks are, but we won't know that until probably another six or seven or eight years."

'Cancer alley'

For Sharon Lavigne, the leader of the faith-based advocacy group Rise St. James, White's bench ruling requiring LDEQ to take a second look at its air permit for the Formosa plant was an affirmation of her nearly three-year campaign to stop the company from building its 2,400-acre facility near her home, which is located along a heavily industrialized 85-mile stretch of the Mississippi River colloquially known as "Cancer Alley" (*Greenwire*, Nov. 20, 2020).

The complex is designed to produce the key ingredients for products like artificial turf, N95 masks and playground equipment. It is called the Sunshine Project, after the cantilever bridge that connects the western and eastern halves of St. James Parish.

Community members don't care for the name or the project.

"We already have so much pollution in the area, so why would they choose this site to put more on us?" said Lavigne. Despite the advice of the lawyers, who told Lavigne to refrain from showing emotion on the Zoom call hearing, she jumped out of her chair when she heard White give her decision.

"I felt like she was speaking from the heart and that she really cared," Lavigne said.

Lawyers from the Tulane clinic, which represented a friend of Lavigne's in the case, had argued that LDEQ had not built a sufficient record in litigation over LDEQ's permit for the Formosa complex.

Tulane argued that the department should have considered the EJSCREEN data.

While LDEQ had run an EJSCREEN analysis, it did so before the tool had been updated with information from the 2014 National Air Toxics Assessment, the latest version currently available. The prior iteration of NATA, released in 2011, showed that Welcome faced no higher cancer risk than the rest of the state.

The 2014 data — which the Tulane team told the court was available before LDEQ issued its permit — showed that Welcome is in the 86th percentile for cancer risk in Louisiana. That's without the Formosa facility in the community, which is a change that LDEQ should have analyzed, said Lisa Jordan, executive director of the Tulane clinic.

"This is just what it's like — I want to say what it's like now, but we still don't know what it's like now, just 2014," she said. "But that was all before Formosa comes in. DEQ never took it that next step."

LDEQ and Formosa have questioned whether a court can require state regulators to consider EJSCREEN data.

"EJSCREEN is rightly not used in this context because the U.S. Environmental Protection Agency cautions the tool should not be used 'as a means to identify or label an area as an EJ community; to quantify specific risk values for a selected area; to measure cumulative impacts of multiple environmental factors,' or 'as a basis for agency decision-making or making a determination regarding the existence or absence of EJ concerns,'" Janile Parks, director of community and government relations for FG LA LLC, Formosa's Louisiana division, wrote in an emailed statement.

Parks cited EPA's EJSCREEN website, which cautions users about the tool's limitations.

Moreover, an LDEQ lawyer argued during the court hearing last year, the department does not have an established procedure for environmental justice analysis and therefore has discretion on whether to use tools like EJSCREEN.

"They do not prove a procedural irregularity where there is no procedure," said LDEQ lawyer Jill Carter, according to a transcript of the hearing obtained by E&E News.

LDEQ declined to comment for this story, due to its pending appeal of White's decision.

In her ruling from the bench, the judge rebuked the department for lacking standards on environmental justice reviews.

"An environmental justice analysis is more than LDEQ going through the motions of soliciting public comment and then giving lip service to an analysis, or not even having a procedure in place as to how to conduct the review itself," White said.

Even if it is only a screening tool, EJSCREEN can be used as one element of an environmental justice analysis, said Terrell of the Tulane clinic.

"If you go to the doctor and you get screened for breast cancer and they say, 'Hey, your screening test yielded a huge red flag,' you don't just go home and say, 'Well it's just a screening,'" she said.

"You follow up on that huge red flag."

A starting point

Data from EJSCREEN has not typically played a pivotal role in legal proceedings — in fact, that is not what the tool was designed to do.

But it can serve as a critical starting point for residents in low-income and minority communities who want to demonstrate to regulators and to the courts that their neighborhoods are being unfairly burdened with industrial activity that could compromise their health and environment.

Chandra Taylor, leader of the Southern Environmental Law Center's environmental justice initiative, said she frequently uses EJSCREEN during her early interactions with potential clients to gauge what data is available about the health risks to members of their community.

Information in hand, she then visits those communities to interview residents to learn about what access they have to medical care, what contamination they've seen in their neighborhoods, and what industrial facilities are near their homes and workplaces.

"Every matter that involves a community of color, I have used a mapping tool," said Taylor, who is based in North Carolina. "And until very recently, the only mapping tool where I'm located was EJSCREEN."

EJSCREEN can be a helpful tool, so long as users recognize its limitations, said Jennifer Richmond-Bryant, an associate professor at North Carolina State University who previously worked at EPA for 11 years.

"The intention of EJSCREEN was to raise questions," she said, "not for policymaking."

Even a strengthened EJSCREEN will suffer from the limitations of the government's focus on environmental justice in National Environmental Policy Act analyses and state-level permit reviews, said Louie Rivers, another NCSU associate professor who serves on the EPA Board of Scientific Counselors' Air and Energy Subcommittee.

"My concern is that we still don't have a standardized way of approaching environmental justice assessments," he said. "Until we do, a tool is only going to be so helpful."

He said he'd like to see how much money the Biden administration plans to devote to environmental justice initiatives. He would also like to see EPA administrator nominee Michael Regan bring on an agency official focused on environmental justice.

"It's easy to improve a tool," Rivers said. "It's harder to say, 'We want you to use this when you do every NEPA review.'"

'Turns to communities'

EJSCREEN isn't always a boon for community advocates.

In proceedings related to a Virginia air permit for a compressor station along the now-defunct Atlantic Coast natural gas pipeline, state regulators used EJSCREEN to show that the community surrounding the planned facility had only a 37% to 39% minority population.

But a door-to-door survey conducted in 2018 showed that the Union Hill community, founded by Black Freedmen at the end of the Civil War, had 83% minority and 62% African American residents. Environmental justice experts say that the data that feeds tools like EJSCREEN can often be too high-level to reflect small minority communities that would be disproportionately affected by a new facility.

"For residents and community members and anyone who hopes to have some sort of validation that their situation is real and that it can be addressed, to have a lack of data and regulators saying the data doesn't match up, it's just absolutely draining," said Taylor Lilley, an environmental justice attorney at the Chesapeake Bay Foundation.

I hope that the administration, if they expand environmental justice tools, turns to communities themselves.

Taylor Lilley, environmental justice attorney at the Chesapeake Bay Foundation

She said she often arrives in court equipped with the same language from the EJSCREEN website that Formosa and LDEQ have cited. Lilley said it strengthens her argument when regulators claim that an EJSCREEN analysis is sufficient to rule out environmental justice concerns in a community.

A federal appeals court ultimately decided in favor of the Union Hill residents in the Atlantic Coast pipeline case, finding that there were "multiple pieces of conflicting evidence about the minority population" in the community (*Greenwire*, Jan. 7, 2020).

The pipeline was later canceled due to mounting regulatory and economic issues with the project.

Lilley said she hopes the Biden administration doesn't lose sight of the needs of vulnerable populations as it proceeds with its plans to build out EJSCREEN and develop new mapping technology.

"I hope that the administration, if they expand environmental justice tools, turns to communities themselves," Lilley said.

What's next for Formosa?

White's ruling last year is far from the end of the road for opponents of the Formosa complex in Louisiana.

The judge's decision could be reversed by a higher court. And even if it isn't, LDEQ could still move forward with Formosa's permit after reviewing the updated EJSCREEN data and other information presented by the Tulane team and other critics of the facility.

Parks of FG LA, Formosa's Louisiana division, said the company is confident that LDEQ's permit for the facility will withstand the scrutiny.

"The air permits the Louisiana Department of Environmental Quality issued to FG in January 2020 are sound," Parks said.

The Army Corps of Engineers is revisiting a separate Clean Water Act permit allowing dredge-and-fill activity at the Formosa complex following a lawsuit in the U.S. District Court for the District of Columbia. And last fall, Formosa said it would delay construction of the facility due to the COVID-19 pandemic.

Lavigne, the Rise St. James leader, said White's ruling gave her an extra jolt of energy to continue her fight to ensure the complex is never built.

"We are accomplishing something," she said. "A little old town like St. James is bringing attention to what's going on."

93rd Arkansas General Assembly: Petroleum Storage Tank Trust Fund Balance Revision

https://www.jdsupra.com/legalnews/93rd-arkansas-general-assembly-6664423/?

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The 93rd Arkansas General Assembly convened for regular session on January 11th.

House Bill 1519 ("HB1519") was introduced on February 22nd which would amend the Arkansas Petroleum Storage Tank Trust Fund Act ("Trust Fund").

HB1519 was introduced by Representative Eaves.

Thousands of underground storage tanks ("USTs") are utilized at facilities across the state to store petroleum products. These businesses and governmental agencies include convenience stores, service stations, grocery stores, bus terminals, fire and police stations, airports, utilities, construction companies and car dealerships.

Subtitle I was added to the Resource Conservation and Recovery Act in 1984 to require that the United States Environmental Protection Agency ("EPA") develop UST design and installation, leak prevention, detection, and corrective action provisions. Particularly relevant to the Arkansas Trust Fund were 1986 amendments which added a requirement for UST owners and operators to meet financial responsibility requirements to address potential third party claims and ensure funds were available to remediate releases.

Concerns regarding the ability of UST owners and operators to comply with the federal EPA financial responsibility requirements prompted many states (including Arkansas) to create petroleum UST trust funds. There was a particular concern in Arkansas because many of the state's UST owners and operators were (and still are) small businesses. As a rural state, the loss of retail motor fuel businesses in some towns could lead to inadequate supply availability in some areas.

The principal purpose of the Arkansas Trust Fund has been to enable UST owners and operators to partially or completely comply with the RCRA financial responsibility requirements. Without the Trust Fund, they would have to utilize certain EPA alternative requirements such as insurance, letter of credit or net worth standards. These are either unavailable or unaffordable for many UST owners or operators.

The Trust Fund was enacted during the 77th Arkansas General Assembly in 1989 to address this concern. It arguably ensures that many Arkansas rural and small business tank owners have the financial ability to meet the EPA financial assurance requirements. It further ensured that a means is available to protect human health and the environment by cleaning up tank leaks.

The Trust Fund is financed by an annual registration fee paid by tank owners and operators and a 0.3 per gallon petroleum environmental insurance fee. The fee is remitted by a motor fuel distributor supplier.

When the balance of the Trust Fund reaches $15 million, the Arkansas Pollution Control and Ecology has an obligation to consider a reduction in the environmental insurance fee. Because the cap was set using 1989 dollars, there is a significant concern that the Trust Fund will be inadequately funded at some point in the future.

HB1519 would adjust the trigger for considering reduction of the environmental insurance fee from $15 million to $30 million. The legislation would amend Arkansas Code § 8-7-906(g)(2)(A) by substituting $30 million for $15 million. It would not increase either the tank registration fees or the petroleum environmental insurance fees.

An objective of the legislation is to ensure an adequate monetary balance is in place. In the event of an inadequate balance, there is a risk that EPA could determine that the Trust Fund can no longer serve as a mechanism to meet the financial assurance requirements. This would potentially force thousands of Arkansas UST owners or operators to close or cease utilization of tanks that are an integral part of their businesses.

The legislation has been referred to the House Committee on Public Health, Welfare and Labor.

Message

From: Sullivan, Melissa [sullivan.melissa@epa.gov]
Sent: 2/3/2021 10:04:22 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Hearing Clips: Afternoon Edition

Spectrum News1: "Two North Carolinians Set to Take Roles at EPA"

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RFD TV: "Sen. Grassley on the outlook of WOTUS under Biden administration"

The Detroit News: "Watch: Michael Regan talks climate policy during EPA confirmation hearing"

Washington Post: "Biden's EPA Nominee Vows 'urgency' on Climate Change

Bloomberg: "EPA Pick Regan Vows Collaboration as GOP Warns of Lost Jobs"

Financial Post: "Biden's EPA pick to review options on biofuel waiver program"

Beaumont Enterprise: "EPA nominee says regulation alone isn't the answer on climate"

News & Record: "Biden EPA nominee vows to preserve resources, boost economy"

News & Record: "In North Carolina, Michael Regan went after polluters. Now, he has to bring that drive to a weakened EPA."

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Spectrum News1: "Two North Carolinians Set to Take Roles at EPA"
Tabitha Corley

NORTH CAROLINA – A North Carolina State University professor now has a role in the U.S. Environmental Protection Agency Office.
Engineering professor Chris Frey has been appointed deputy assistant administrator for science policy in the Office of Research and Development arm of the agency, according to a news release from the university. The research from the department helps the EPA make decisions.
Frey's research at N.C. State includes measuring air pollution, vehicle emissions, and more.
"Chris is a great choice to serve in EPA's Office of Research and Development," says Morton Barlaz, professor and head of the CCEE department.
"He has a demonstrated track record of leadership in developing science-based recommendations for environmental policy as part of EPA's Science Advisory Board. It is an honor to have one of our faculty selected for such an important public service position."
The university says he will take a leave of absence during his tenure at the EPA.
Frey is set to join another North Carolinian at the agency. Secretary of North Carolina's Department of Environmental Quality Michael Regan is President Joe Biden's pick to lead the EPA. His confirmation hearing takes place Wednesday.

Spectrum News1: "N.C. DEQ Sec. Michael Regan, Biden's Pick for EPA, Faces Confirmation Hearing Wednesday"
Kevin Frey

The head of North Carolina's Department of Environmental Quality, DEQ, is about to take a step onto the national stage.

Michael Regan, Joe Biden's pick to lead the Environmental Protection Agency, EPA, will face questions from U.S. senators Wednesday at his confirmation hearing.

Biden first announced Regan as his nominee for the job in December.

"After completing my education in environmental science, there was one place in particular that I wanted to work: the EPA," Regan said at a press event in Wilmington, Del.

Daw Crawford with the North Carolina League of Conservation Voters praised Regan's nomination, arguing he will put science front and center at the federal agency.

"It's a breath of fresh air, pun intended," Crawford said.

If confirmed, Regan will be taking over an agency reshaped by the Trump administration, which changed and rolled back a slew of environmental standards.

"He has done at the state level here in North Carolina what's going to be asked of him to do at the national level: come in from a fresh perspective, take over from an administration that did everything wrong, and start anew," Crawford said.

During his time leading DEQ, Regan made headlines for a multi-billion dollar coal ash cleanup settlement with Duke Energy.

He also set up an environmental justice panel - a fight he's signaled he plans to continue at the federal level.

"Every person in our great country has the right to clean air, clean water, and a healthier life no matter how much money they have in their pockets, the color of their skin, or the community that they live in," he said at the introductory press event in December.

Another fight he is likely to find himself in the middle of: climate change. On that front, former DEQ Sec. Donald van der Vaart says expect the White House to play a predominant role.

"You're going to see things happen directed out of the White House through executive orders, and perhaps through legislation if they can get something done," said van der Vaart, who now serves as a senior fellow at the John Locke Foundation.

Regan's confirmation hearing is scheduled for Wednesday afternoon. Watch it here.

RFD TV: "Sen. Grassley on the outlook of WOTUS under Biden administration"
James Ferguson

The ag sector has continued to express concern over what will happen to the Waters of the U.S. rule, or WOTUS.

Senator Chuck Grassley says that it looks like the new administration is par with making changes to the Trump rollbacks.

"I am anticipating that they are going to do something in that area," the Senator states. "I don't think they're going to be able to do it overnight. It'll take several months because it just took several months for the Trump administration to delete it, put something in its place."

Sen. Grassley says that he does believe the ag industry is in good hands with the EPA Administrator nominee Michael Regan. His confirmation process starts this afternoon.

The Detroit News: "Watch: Michael Regan talks climate policy during EPA confirmation hearing"
Riley Beggin

Washington — A U.S. Senate panel will hold a confirmation hearing for Michael Regan, President Joe Biden's pick to lead the Environmental Protection Agency, Wednesday afternoon.

If confirmed, the 44-year-old former North Carolina environmental regulator would be the first Black man to lead the EPA, which will be one of the crucial agencies in Biden's multi-pronged approach to combatting climate change.

The agency's actions will have a far-reaching affect on the U.S. auto industry, including changes to federal emissions standards that determine how much carbon dioxide vehicles can emit on the road.

In March last year, EPA and the National Highway Traffic Safety Administration finalized a rule that would increase emissions standards by 1.5% ever year through model year 2026, rather than the 5% annual bump put in place by the Obama administration

The agency is expected to take a sharp turn back toward Obama-era regulations. Automakers considered Obama's rules too aggressive while environmental advocates are urging the Biden administration to go further.

The Alliance for Automotive Innovation, the leading advocacy group for automakers selling vehicles in the U.S., announced earlier this week it was pushing for the Biden not to return to Obama's rules but to implement new levels "roughly midway" between the last two presidential administrations.

The transportation sector is the largest sources of greenhouse gas emissions in the U.S., according to EPA, and is expected to be a major focus of Biden's push to reduce the nation's carbon footprint. Biden has said he wants to reach net-zero emissions economy-wide by 2050 and eliminate carbon emissions from the electric sector by 2035.

The EPA was one of the agencies most affected by former President Donald Trump's deregulatory approach to federal policymaking, with nearly 100 environmental rules reversed or rolled back under the administration.

Washington Post: "Biden's EPA Nominee Vows 'urgency' on Climate Change
Brady Dennis

Michael S. Regan, President Biden's choice to lead the Environmental Protection Agency, told lawmakers Wednesday that he would "restore" science and transparency at the agency, focus on marginalized communities and move "with a sense of urgency" to combat climate change.

Facing a Senate panel where half of the members are Republicans wary of the EPA's authority and its reach into much of American life, Regan appealed to a collective sense of duty.

"We all have a stake in the health of our environment, the strength of our economy, the well-being of our communities, and the legacy we will leave the next generation in the form of our nation's natural resources," Regan told members of the Senate Environment and Public Works Committee during his confirmation hearing.

The 44-year-old Regan began his career at the EPA more than two decades ago and currently heads the North Carolina Department of Environmental Quality. If confirmed, he would become the first Black man to lead the EPA in its half century of existence, working in an administration that has pledged to address the unequal burden of pollution carried by communities of color.

He also would step into a high-profile job with a pair of daunting missions: to reverse the aggressive dismantling of environmental safeguards during the Trump years, and to play a central role in translating Biden's promise to combat climate change into real-world policies.
Tracking Biden's environmental actions

Over the past four years, the Trump administration took aim at more than 200 environmental protections and rules, according to a Washington Post analysis — a relentless deregulatory agenda included scaling back automobile fuel-efficiency standards and emissions limits for coal-burning plants, as well as easing Obama-era limits on everything from drilling on public lands to methane released from new oil and gas wells.

Under Trump, the EPA shrank by hundreds of employees, downplayed the science around climate change and the intensifying risks it poses to the United States, and pursued policies aimed at bolstering the fossil fuel industry.

Biden has made climate change a pillar of his young administration. He rejoined the Paris climate accord, halted the controversial Keystone XL pipeline and began the process overturning scores of environmental actions taken by Trump. Many of those will require action by the EPA.
But even as the new White House moves decisively and activists clamor for even more far-reaching, swift efforts, Regan — in keeping with his track record and reputation in North Carolina — positioned himself Wednesday as more a consensus seeker than crusader.

"Throughout my career, I've learned that if you want to address complex challenges, you must first be able to see them from all sides, and you must be willing to put yourself in other people's shoes," Regan said, adding that he would pursue "pragmatic" solutions and that "we can't simply regulate ourselves out of every problem we face." He vowed to "establish clear, consistent rules of the road" for businesses the EPA oversees.

It's an approach that has won Regan broad respect across party lines in North Carolina, and also criticism from environmentalists who wanted him to act more aggressively, since he took over as secretary of the state's Department of Environmental Quality in 2017.
During his tenure, he oversaw a tough multibillion-dollar settlement over the cleanup of coal waste storage facilities with Duke Energy, established an environmental justice advisory board and reached across the political divide to work with the state's Republican legislature — an approach that engendered goodwill even from those who disagreed with his policies.

With historic picks, Biden puts environmental justice front and center

In another high-profile environmental case, the state ordered the chemical company Chemours to virtually eliminate per- and polyfluoroalkyl substances (PFAS), a group of man-made chemicals, from seeping into the Cape Fear River. The chemicals — used in cookware, stain repellent and other products — have been linked to harmful health effects, including low infant birth weights and thyroid hormone disruption.

Regan, who graduated from North Carolina A&T University and earned a master's at George Washington University, also advised Gov. Roy Cooper (D) on the state's plans to mitigate climate change. His actions have at times frustrated environmental advocates, some of whom say he could have been tougher on polluting industries, even as they describe him as honest and well-intentioned.

Ryke Longest, founding director of the Duke University Environmental Law and Policy Clinic, told The Post in December that Regan didn't do enough to block the construction of two natural gas pipelines or to clean up toxic conditions at the North Carolina's largest hog farms. The pipelines would "have adverse impacts on low-income and indigenous communities" and should have been opposed on environmental justice grounds, he said.

At the same time, Longest and others have credited Regan with restoring morale at the state agency after the turbulent tenure of his predecessor, whom critics accused of weakening the department and giving more favorable treatment to polluting industries. Environmental groups have largely rallied around Regan's nomination, arguing that he has the right background and skills to pursue meaningful action to cut the nation's emissions, boost clean energy jobs and bring about cleaner air and water for low-income and minority communities that historically have suffered the most from pollution.

"As our nation struggles with a historic pandemic, environmental injustices and climate impacts, we need visionary environmental leaders like Michael Regan now more than ever," Collin O'Mara, president of the National Wildlife Federation, said in a statement.

Regan oversees about 1,600 employees and seven regional offices across North Carolina. At the EPA, he would inherit an agency nearly 10 times that size, and one that has repeatedly found itself in the political crosshairs in recent years.

Regan arrived at EPA in the late 1990s and served for more than a decade under both the Clinton and Bush administrations, working on air quality and energy issues. He eventually returned to his native North Carolina as southeast regional director for the Environmental Defense Fund, an advocacy group, where he focused on lessening the impacts of climate change on the region and on improving air quality in polluted communities before heading into state government.

But on Wednesday, Regan said that it was during his childhood in eastern North Carolina — where he grew up hunting and fishing with his father and grandfather, but also suffered from asthma in an area with a legacy of toxic pollution — that he began to grasp the importance of environmental protection.
"Preserving our natural resources isn't something to balance with economic growth," he said. "It's one of the keys to economic growth, along with protecting public health and our way of life."

Bloomberg: "EPA Pick Regan Vows Collaboration as GOP Warns of Lost Jobs"
Jennifer Dlouhy

President Joe Biden's nominee to run the EPA vowed to collaborate with local governm[illegible] businesses and working Americans to confront major environmental threats if confirmed by the U.S. Senat[illegible]

"We can't simply regulate our way out of every problem we face," Michael Re[illegible]ment and Public Works Committee on Wednesday. Instead, Regan said, the best way to [illegible]s "by convening stakeholders where they live, where they work and where they ser[illegible]ring [illegible] dialogue rooted in respect for science, a clear understanding of the law and a commitm[illegible] co[illegible]ith pragmatic solutions."

If confirmed as administrator of the Environmental Protection Agency, Regan w[illegible] forefr[illegible]f Biden's plans to confront climate change and promote environmental equity, including by [illegible]reenhouse gas emissions from power plants, automobiles and oil wells. Republicans were [illegible] Regan about those regulatory ambitions -- and the potential threat to U.S. jobs -- during his confirmation hearing Wednesday.
Regan set to head off some complaints in his opening remarks, by promising to drive consensus based on shared values in protecting environmental health and economic strength. Preserving natural resources won't come at the expense of economic growth but will actually drive it, he said.

"We are moving beyond the old argument that we have to pit creating jobs against protecting the environment," Regan said.
Environmental regulators who served under former President Donald Trump offered similar assurances as they moved to ease rules governing air and water pollution they said hindered businesses and ran afoul of federal law. Many of those mandates are now set for a rewrite under Biden, who has cast the fight against climate change as an economic opportunity.

If confirmed, Regan would draw on a four-year tenure as North Carolina's chief environmental regulator that put him in the middle of fights over the construction of new natural gas pipelines and the cleanup of chemicals, including coal ash, a toxic byproduct of burning coal to generate electricity.
Under Regan, the North Carolina Department of Environmental Quality blocked a certification critical to constructing an extension of the Mountain Valley Pipeline but approved a similar authorization for the now-abandoned Atlantic Coast pipeline.

Regan also negotiated a settlement with Duke Energy Corp. over its coal ash cleanup efforts that won praise from environmentalists and separately ordered Chemours Co. to take steps to prevent contamination of the so-called forever chemicals per- and polyfluoroalkyl substances.
"Michael distinguished himself as somebody who listens and tried to take in the input from both sides and come up with a fair outcome," said Senator Thom Tillis, a Republican from North Carolina. Regan's "track record of listening and trying to come up with a sustainable outcome" means he is "somebody we can rely on to be fair."

Regan, who would be the first Black man to lead the EPA if confirmed, said his priorities would include restoring a commitment to science and transparency at the agency and supporting its career officials. Regan used to be one; he served at the agency for nearly a decade under former Presidents Bill Clinton and George W. Bush at the start of his career.

Financial Post: "Biden's EPA pick to review options on biofuel waiver program"
Stephanie Kelly

NEW YORK — U.S. President Joe Biden's pick to lead the Environmental Protection Agency said on Wednesday he will consult with general counsel to understand the options available for a program that exempts small refiners from biofuel blending obligations.
Michael Regan, formerly head of North Carolina's environmental regulator, said waiting for a ruling from the Supreme Court on a case related to the program was "one way to go."

The exemption program is contentious, as biofuel producers and corn farmers say the waivers hurt demand for their products, while the oil industry rejects that claim and says the program is necessary to keep small refiners afloat amid pricey blending obligations.

"The one thing I know I have to do is consult with our general counsel, understand where we are in the legal process, and also understand what options do we have to continue conversations," he said during a hearing on his nomination.
Under the U.S. Renewable Fuel Standard, refiners must blend billions of gallons of biofuels into their fuel mix, or buy credits from those that do. Refiners can apply for waivers, known as Small Refinery Exemptions, if they can prove the requirements do them financial harm.

The previous EPA under former President Donald Trump punted several issues related to the RFS and exemption program to the Biden administration. Renewable volume obligations for 2021 have not yet been set, though the deadline was the end of November.
Further, tens of Small Refinery Exemption petitions remain pending. A court case last year cast doubt on the waiver program, and the Trump administration largely left petitions untouched for the 2019 compliance year as litigation around the case plays out.

Beaumont Enterprise: "EPA nominee says regulation alone isn't the answer on climate"

WASHINGTON — Michael Regan, President Joe Biden's pick to lead the Environmental Protection Agency, worked to assure Senate Republicans Wednesday that they would be heard as the new administration crafted regulations to address climate change.
In a hearing before the Senate Environment and Public Works Committee, Regan, secretary of North Carolina's Department of Environmental Quality and a former leader at the Environmental Defense Fund, described a climate strategy in which he would both use both regulation and investment strategies to work with industry to reduce greenhouse gas emissions.

"We can't simply regulate our way out of every problem we face," he said. "If you want to address complex challenges, you must be able to see them from all sides. You have to be able to put yourself in other people's shoes."

Since Biden took office last month, Republicans have been inflamed by a series of executive orders aimed at shifting the county away from fossil fuels, including the canceling of the construction permit for the Keystone XL pipeline project and a one-year moratorium on oil and gas leasing on federal lands and waters, including the Gulf of Mexico.
Sen. Shelly Moore Capito, R-W.V., questioned whether the administration's commitment to helping protect impoverished communities from pollution would leave them worse off economically - a reminder of the impact that coal mine closures have had on West Virginia and other Appalachian states.
"Where's the justice when many people are plunged into poverty, drug addiction and homelessness," she asked Regan.

In North Carolina, Regan earned a reputation as a centrist deal-maker under Democratic Gov. Roy Cooper, who was willing to sit down with farmers, energy companies and other stakeholders impacted by his actions. Sen. Richard Burr, R-N.C., described Regan's work to clean up agriculture and power plants in their state as " balancing the values of environmental stewardship with the needs of rural communities."

That has prompted some criticism from progressives that Regan's efforts to bring the two parties together on climate change will slow a decarbonization process that needs to move quickly. Asked why Biden hadn't consulted with states before issuing his executive orders, Regan described the orders as "setting goals and visions."
"They leave plenty of room of how these things will be implemented," he said. "We have a ton of time to aim for these goals but massage the process by which we achieve these goals."

News & Record: "Biden EPA nominee vows to preserve resources, boost economy"

WASHINGTON (AP) — President Joe Biden's nominee to run the Environmental Protection Agency says he learned the importance of preserving the outdoors while hunting and fishing with his father and grandfather in rural North Carolina.
“Those beautiful waters and land are a legacy they were proud to share with me, but also taught me that protecting them was my responsibility as well,'' Michael Regan told a Senate committee Wednesday in prepared testimony for his confirmation hearing. ”Preserving our natural resources isn’t something to balance with economic growth. It’s one of the keys to economic growth, along with protecting public health and our way of life.''

Regan, who has served as top environmental regulator in his home states since 2017, would be the first African American man to run the EPA. He made a name for himself in North Carolina by pursuing cleanups of industrial toxins and helping the low-income and minority communities significantly affected by pollution.
If confirmed by the Senate, Regan would take over the EPA after four years in which former President Donald Trump sought to weaken or eliminate dozens of key public health and environmental protections for clean air, water and climate-changing carbon pollution.

In North Carolina, Regan led negotiations that resulted in the cleanup of the Cape Fear River, which has been dangerously contaminated by industrial chemicals known as PFAS.

They sometimes are referred to as “forever chemicals” because of their longevity in the environment and have been associated with increased risk of cancer and other health problems. With Duke Energy, Regan negotiated what North Carolina says was the largest cleanup agreement for toxic coal ash, a by-product of coal-fired power plants.
Regan, 44, spent nearly 10 years working at EPA under presidents of both parties. He called it "the honor of a lifetime to be asked to return'' to lead the agency.
Known as a consensus builder, Regan said that throughout his career, "I’ve learned that if you want to address complex challenges, you must first be able to see them from all sides and you must be willing to put yourself in other people’s shoes."

He pledged to talk to businesses, community groups, scientists and others and to reach "consensus around pragmatic solutions.'' His time in government has shown him that, "we can’t simply regulate our way out of every problem we face,'' he added.
Biden has vowed to focus on environmental justice as a a core part of his climate and environmental strategy, and Regan said he was eager to do his part. And there's a personal element — growing up, Regan had a respiratory condition that required him to use an inhaler, a consequence of heavily polluting factories and power plants in Eastern North Carolina.

"I will never forget looking into the eyes of Amy Brown, the mother of two boys, as she told me she could not let her sons play in the bathtub or the pool in the backyard for years because they were required to live on bottled water after the Dan River coal ash spill," he said. As he gave his son Matthew a bath with fresh tap water, "I vowed this story would have a happier ending for Amy and her two sons," Regan said.

Sen. Tom Carper, D-Del., the incoming chairman of the Senate Environment and Public Works Committee, said Regan developed a reputation as "a leader who works with Democrats and Republicans to forge practical solutions. As we struggle to put the current recession behind us, that kind of leadership is what we need now more than ever at EPA." Carper said it was "no secret that the next EPA administrator has his work cut out for him." In addition to addressing serious environmental issues — especially climate change — Regan "will also be tasked to rebuild an agency badly damaged in recent years by flawed leadership" under Trump, "and an agency suffering from organizational drift and low morale," Carper said. "One of the keys to accomplishing this will be restoring scientific integrity as the foundation of policymaking at EPA. Michael Regan understands this well."

As EPA administrator, Regan would work with the White House and climate adviser Gina McCarthy, a former EPA administrator, to complete major new regulations on power plants, automobile tailpipes, mercury emissions and waterways — all of which will face strong opposition form congressional Republicans.
West Virginia Sen. Shelley Moore Capito, the top Republican on the environment panel, questioned Regan's effectiveness even before the hearing began. He and other Cabinet officials tasked with addressing climate change "are going to be tripping over each other," Capito said, and will face likely interference from McCarthy and former Secretary of State John Kerry, who now serves as a special climate envoy.

"Who is really going to be making decisions?" she asked in a Senate speech last week. "Will this Cabinet actually wield any power, or will the decisions be made in the White House in an effort to avoid public and congressional scrutiny? The American people really need to know."
One of those Cabinet nominees, Jennifer Granholm, won approval from the Senate energy panel Wednesday to serve as Energy secretary. A vote in the full Senate could occur as soon as next week.

News & Record: "In North Carolina, Michael Regan went after polluters. Now, he has to bring that drive to a weakened EPA."
Matthew Daly

WASHINGTON — President Joe Biden's nominee to run the Environmental Protection Agency says he learned the importance of preserving the outdoors while hunting and fishing with his father and grandfather in rural North Carolina. "Those beautiful waters and land are a legacy they were proud to share with me, but also taught me that protecting them was my responsibility as well," Michael Regan told a Senate committee Wednesday in prepared testimony for his confirmation hearing. "Preserving our natural resources isn't something to balance with economic growth. It's one of the keys to economic growth, along with protecting public health and our way of life."
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From: E&E News [ealerts@eenews.net]
Sent: 2/25/2021 11:57:47 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: February 25 -- Climatewire is ready

Climatewire -- Policy. Science. Business.

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CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Thu., February 25, 2021

READ FULL EDITION

1. POLITICS:
Fringe weatherman advised Abbott before deadly Texas storm

Days before a historic snowstorm crippled his home state, Texas Gov. Greg Abbott (R) sought advice from an unusual source: Joe Bastardi, the go-to weather forecaster of Fox News host Sean Hannity.

TOP STORIES

2. FINANCE:
SEC to toughen climate rules on companies

3. EXTREME WEATHER:
State officials slam FEMA plan to reduce disaster aid

CLIMATE IMPACTS

4. BUSINESS:
Toyota to build futuristic 'Woven City' with no gas cars

5. CALIFORNIA:
Cap-and-trade auction sells out, boosting climate budget

INTERNATIONAL

6. FRANCE:
Meatless school meals spark furor in capital of gastronomy

7. CANADA:
More policy, less pomp as Biden and Trudeau meet virtually

8. EUROPE:
E.U. seeks stronger economic protection from climate risks

IN THE STATES

9. OKLAHOMA:

Governor requests 2nd storm disaster declaration

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Climatewire is written and produced by E&E News, which is staffed by a dedicated reporting team within the POLITICO newsroom. It provides comprehensive coverage of all aspects of climate change issues. From international agreements on carbon emissions to alternative energy technologies to state and federal GHG policies to corporate sustainability, Climatewire plugs readers into the information they need to stay abreast of this complex issue. Climatewire publishes daily by 7:00 a.m.

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To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 9 -- E&E Daily is ready

E&E Daily -- Congress. Legislation. Politics.

Read today's E&E Daily on the web

E&E DAILY

AN E&E NEWS PUBLICATION

E&E DAILY — Tue., March 9, 2021

READ FULL EDITION

1. AGENDA:
Lawmakers turn to climate in search of 'moving train'

Democrats are set to forge ahead with a clean energy and infrastructure bill, but they face bruising political questions that could imperil a rare opportunity to pass significant climate policy into law.

TOP STORIES

2. CAMPAIGN 2022:
How the GOP is using Biden's energy agenda to retake power

3. NATIONAL MONUMENTS:
Republican embraces a larger Bears Ears, seeks consensus

4. INTERIOR:
Steve Daines makes good on promise to put hold on Haaland

ON THE HILL

5. DOE:
Committee schedules vote on deputy secretary nominee

6. POLITICS:
Ted Cruz slows CIA nominee over Russian gas pipeline

IN COMMITTEE

7. ENERGY POLICY:
Democrats revive oil sands spill liability push

8. ENERGY POLICY:
House GOP seeks to promote nuclear financing

UPCOMING HEARINGS AND MARKUPS

9. CALENDAR:

Activity for March 8 - March 14, 2021

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E&E Daily is written and produced by E&E News, which is staffed by a dedicated reporting team within the POLITICO newsroom. Designed for policy players who need to know what's happening to their issues on Capitol Hill, from federal agency appropriations to comprehensive energy legislation, E&E Daily is the place insiders go to track their environmental and energy issues in Congress. E&E Daily publishes daily by 7:30 a.m. while Congress is in session.

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To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: March 16 -- Climatewire is ready

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Read today's Climatewire on the web

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Tue., March 16, 2021

READ FULL EDITION

1. GEOENGINEERING:

8 states are tweaking the weather (and it might not work)

States across the West are seeding clouds to combat a "megadrought." But there's little evidence to show that weather modification can increase precipitation.

A message from POLITICO:

POLITICO DISPATCH: Get an insider's briefing on all the updates you need every morning with POLITICO's daily news podcast. We take you inside POLITICO and pull back the curtain on politics and policy. Fast. Short. Daily. **Listen to POLITICO Dispatch now.**

TOP STORIES

2. LAW:

5 climate liability lawyers to watch

3. FINANCE:

'All hands on deck': SEC seeks input on climate risk rules

CLIMATE IMPACTS

4. SCIENCE:

Oceans are spitting out a human-made pollutant

5. ENVIRONMENTAL JUSTICE:

Wanted: Green infrastructure for Great Lakes region

IN THE STATES

6. CALIFORNIA:

Report: State's far off pace for reaching 100% clean grid

7. MARYLAND:

State Senate passes measure to fight climate change

8. SOUTH CAROLINA:

Governor honors residents who share weather observations

INTERNATIONAL

9. RUSSIA:

Moscow sees opportunity in warming Arctic

10. INDONESIA:

Government rolls out bold tax perks for electric cars

A message from POLITICO:

GO BEHIND THE FIRST 100 DAYS: Joe Biden entered the White House with an expansive agenda, including rethinking energy and climate policy. Keep up to date on his agenda with POLITICO's First 100 Days to track the 46th president's efforts to reshape policy and politics. Follow along as we chronicle the regulation and legislation used to enact an agenda. **Check out the First 100 Days now.**

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From: POLITICO Pro Energy [alert@email.politicopro.com]
Sent: 2/12/2021 4:17:36 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Climate hawk Merkley to chair EPA-Interior funding panel

Climate hawk Merkley to chair EPA-Interior funding panel

By Anthony Adragna

02/12/2021 11:16 AM EST

Sen. Jeff Merkley (D-Ore.), a fierce advocate for climate change action, will chair the Appropriations Interior and Environment Subcommittee responsible for funding the EPA and Interior Department, the full committee announced Friday.

Merkley, who replaces retired Sen. Tom Udall (D-N.M.) as the top Democrat on the panel, is an original co-sponsor of the Green New Deal resolution, S. Res. 59 (116), and has a 99 percent lifetime score from the League of Conservation Voters. Sen. Lisa Murkowski (R-Alaska) will remain the top Republican on the panel.

Other members: The other Democrats on the panel are Sens. Dianne Feinstein (Calif.), Patrick Leahy (Vt.), Jack Reed (R.I.), Jon Tester (Mont.), Chris Van Hollen (Md.) and Martin Heinrich (N.M.).

Joining Murkowski on the Interior-EPA subpanel are GOP Sens. Roy Blunt (Mo.), Mitch McConnell (Ky.), Shelley Moore Capito (W.Va.), Cindy Hyde-Smith (Miss.), Bill Hagerty (Tenn.) and Marco Rubio (Fla.).

Changes at Energy-Water: Feinstein will chair the Energy and Water Subcommittee, joined by new Republican ranking member Sen. John Neely Kennedy (La.), who replaces former Sen. Lamar Alexander (Tenn.).

Other Democrats on the panel responsible for funding the Energy Department are Sens. Patty Murray (Wash.), Dick Durbin (Ill.), Jeanne Shaheen (N.H.), Chris Coons (Del.), Tammy Baldwin (Wis.), Tester, Merkley and Heinrich.

Alongside Kennedy, the GOP members of the subcommittee are Sens. Susan Collins (Maine), Lindsey Graham (S.C.), John Hoeven (N.D.), Richard Shelby (Ala.), McConnell, Murkowski, Hyde-Smith and Hagerty.

To view online:
https://subscriber.politicopro.com/energy/whiteboard/2021/02/climate-hawk-merkley-to-chair-epa-interior-funding-panel-3986996

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Subject: February 3 -- E&E News PM is ready

E&E News PM -- Late-Breaking News

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AN E&E NEWS PUBLICATION

E&E NEWS PM — Wed., February 3, 2021

READ FULL EDITION

1. EPA:
Republicans push Regan on Biden agenda

Michael Regan, President Biden's nominee for EPA administrator, faced questions today over the administration's climate change plans.

THIS AFTERNOON'S STORIES

2. RENEWABLE ENERGY:
Biden admin will resume Vineyard Wind permitting

3. WHITE HOUSE:
Regulations office hires Obama-era scientist

4. INTERIOR:
BLM restores conservation 'mission' language

5. PIPELINES:
Ilhan Omar wants Line 3 to get the Keystone XL treatment

6. PUBLIC LANDS:
DOJ, Apache group debate religion in copper mine dispute

UPCOMING HEARINGS AND MARKUPS

7. CALENDAR:
Activity for February 1 - February 7, 2021

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Sent: 2/25/2021 11:00:50 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Agri-Pulse Daily Harvest 2/25/2021

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Agri-Pulse Daily Harvest -- 2/25/2021

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FARM & RURAL POLICY

Agri-Pulse: Daybreak for February 25, 2021

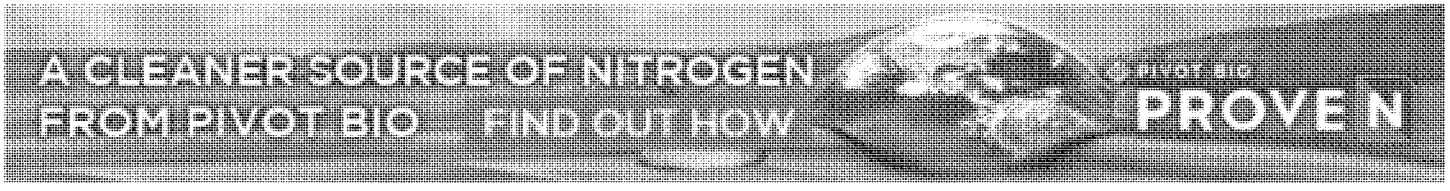
Link - (Audio) Lawmakers assured on carbon cut; Hemp fix gets state support; Groups buck GOP on minority debt relief.

Agri-Pulse: DriveTime: February 24, 2021

Link - (Audio) DriveTime features a look at the market situation for beef producers and consumers as well as the kickoff to the process that could lead to infrastructure legislation in the Senate.

Agri-Pulse: Vilsack sworn in, USDA updates CFAP plans
Link - Tom Vilsack was sworn in Wednesday evening for his second stint as agriculture secretary, and the Agriculture Department provided new guidance on its review and planned implementation of additional coronavirus relief.

Agri-Pulse: Farmworkers, climate and wildfires are the focus of new legislation in California
Link - The California Legislature is planning an active session this year to make up for lost time in 2020.



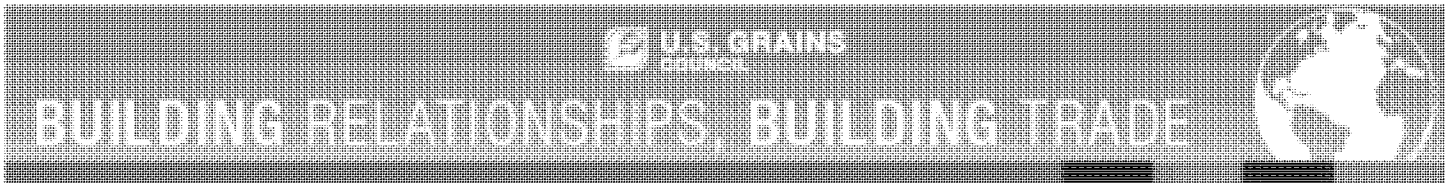
ENERGY

The Wall Street Journal: Texas Electric Bills Were $28 Billion Higher Under Deregulation
Link - Competition in the electricity-supply business promised reliable power at a more affordable cost.

Reuters: Exclusive: U.S. airline CEOs to meet with White House on cutting carbon footprint
Link - The chief executives of major U.S. airlines are set to meet virtually with two key White House advisers on Friday about efforts to reduce carbon emissions and use renewable fuels, five people briefed on the matter told Reuters.

Bloomberg: Ethanol Output Plunges Most on Record After U.S. Deep Freeze
Link - U.S. production of the biofuel declined 28% from prior week.

Arizona Daily Star: Arizona lawmakers move to strip commission from mandating use of renewable energy
Link - State lawmakers voted Wednesday to strip the Arizona Corporation Commission of its power to mandate the use of renewable energy by utilities.



FOOD & NUTRITION

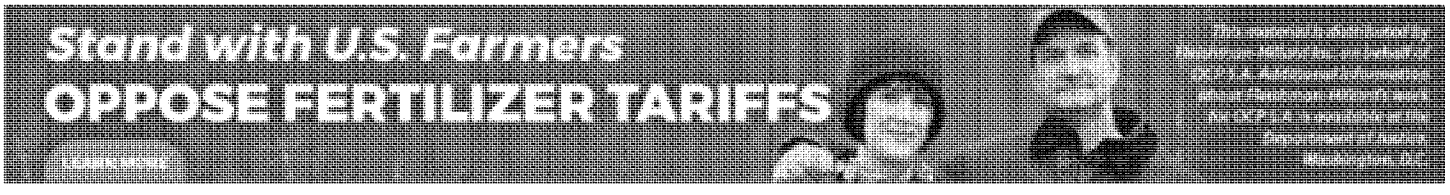
Eater: The COVID Gardening Renaissance Depends on Seeds — if You Can Find Them
Link - Demand for seeds is up this year, and many hope this is the sign of a longer-term shift toward people growing their own food.

Eater: Rampant Heater Theft Is the Latest Blow to Outdoor Dining
Link - The rush to purchase heat lamps for outside seating has led to a lucrative secondary market — and a surge in stealing.

Duluth News Tribune: Strengthening the farm to rural grocery pipeline
Link - A survey and toolkit from the University of Minnesota Extension's Regional Sustainable Development Partnerships were designed to help bolster the state's rural grocery stores.

ABC News: Biden to make 25 million masks available at community health centers, food banks
Link - It's part of his effort to get more Americans to wear masks.

NBC News: Asian American food aid expands to address hidden hunger during pandemic
Link - As Asian Americans experience high rates of poverty and unemployment, community groups are providing free groceries and meals to thousands every day.



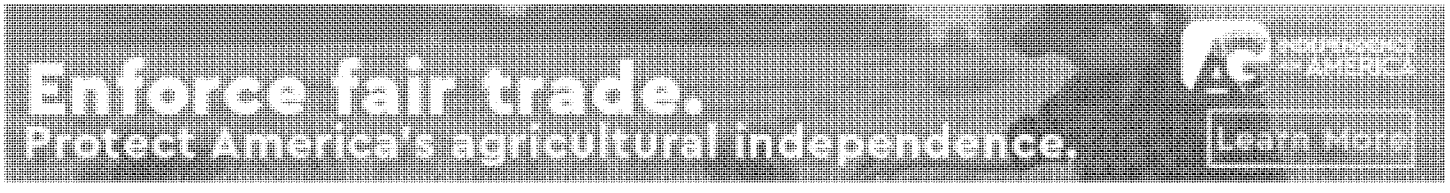
TRADE & INTERNATIONAL

Agri-Pulse: Mexican Supreme Court delays potato import decision
Link - Mexico's Supreme Court Wednesday delayed a controversial decision on banning U.S. fresh potatoes that could have wider implications on agricultural trade with Mexico.

WIRED UK: Vertical farms nailed tiny salads. Now they need to feed the world
Link - Vertical farming is finally growing up. But can it move from salad garnishes for the wealthy to sustainable produce for the masses?

The Guardian: Meatless school menu sparks political row in France
Link - Temporary decision by Green mayor of Lyon to take meat off menu met by protests.

Gizmodo: Groundwater Depletion Threatens 20% Of India's Winter Farmland
Link - In India, agriculture employs more than 50% of the country. It's also in crisis due to climate change and groundwater loss. A new study shows how these two factors are putting the country's farmers at risk.



LABOR & IMMIGRATION

Lynchburg News and Advance: Dozens of essential farm workers receive first dose of COVID-19 vaccine
Link - Dozens of Nelson County's migrant farm workers and other essential farm workers received their first dose of the COVID-19 vaccine over the weekend as health officials continue to work through phases of the immunization rollout.

WLOS: Ag officials want farm workers moved up on COVID-19 vaccine priority list

Link - There's a push to make agriculture workers a higher priority when it comes to getting the COVID-19 vaccine. Ag workers are critical to the economy, and moving them closer to the head of the line is important, state officials said.

Associated Press: Biden lifts Trump-era ban blocking legal immigration to US
Link - President Joe Biden on Wednesday lifted a freeze on green cards issued by his predecessor during the pandemic that lawyers said was blocking most legal immigration to the United States.

Texas Tribune: Federal judge indefinitely blocks enforcement of Biden administration's 100-day deportation freeze
Link - Texas sued to block the ban on Biden's third day in office. Federal Judge Drew Tipton had already temporarily paused it twice before Tuesday night's order.

The Hill: 60 percent of Americans support eight-year path to citizenship for undocumented immigrants: poll
Link - Sixty percent of Americans in a new poll back an eight-year path to citizenship for undocumented immigrants, a sign of support as Democrats try to push President Biden's immigration plan through Congress.

CONSERVATION & WILDLIFE

Agri-Pulse: Farmers tell Newsom to stop blaming agriculture when setting climate goals
Link - California farmers are pushing back on Gov. Gavin Newsom's goal to conserve 30% of the state's land by 2030.

Agri-Pulse: Organic leader hopes for more inclusion on climate change
Link - An organic agriculture leader is hoping for more diverse perspectives in USDA discussions

about climate change.

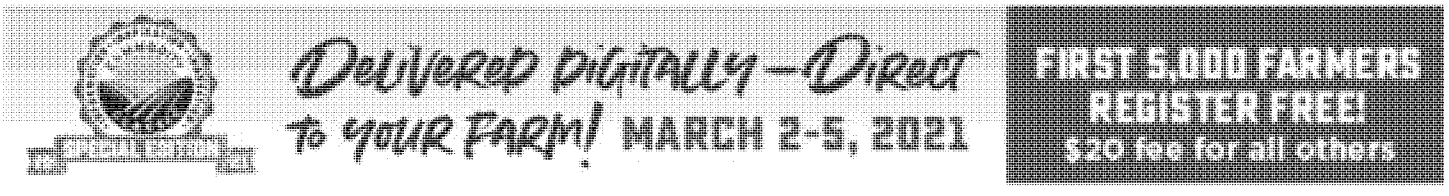
Agri-Pulse: Comments sought on four pesticides
Link - The draft biological opinions evaluate the impact of these pesticides on 26 federally listed endangered and threatened species of Pacific salmon and steelhead in Washington, Oregon, and California.

NPR: New Evidence Shows Fertile Soil Gone From Midwestern Farms
Link - Farming has destroyed a lot of the rich soil of America's Midwestern prairie. A team of scientists just came up with a staggering new estimate for just how much has disappeared.

Associated Press: Bats, birds among wildlife pummeled during Southern freeze
Link - Starving and disoriented, the winged mammals tumbled to the snow-coated ground as temperatures plunged to levels rarely seen in the region.

The Texas Tribune: Texas plants released nearly as much pollution during winter storm as during Hurricane Laura
Link - Oil refineries, chemical plants and other industrial operators emitted 3.5 million pounds of excess pollution during the winter storm and power crisis in Texas, according to an analysis of company notices provided to state regulators.

Associated Press: Minnesota Supreme Court hands victory to PolyMet copper mine
Link - The Minnesota Supreme Court on Wednesday reversed an appeals court's rejection of a critical air emissions permit for the planned PolyMet copper-nickel mine and sent the case back for further proceedings.



MISCELLANEOUS

Agri-Pulse: Opinion: Mr. Secretary, start with America's rural family forest owners to help tackle climate change

Link - In this opinion piece, Tom Martin with American Forest Foundation, calls on Secretary Vilsack to help scale forest carbon programs across the country.

Princeton Daily Clarion: Lawmaker eyes urban agriculture as new growth industry for Region cities

Link - Farming isn't exactly what comes to mind when Region residents think about the industrialized cities of northern Lake County. But state Rep. Earl Harris Jr., D-East Chicago, is working to change that.

KFVS: Ill. Dept. of Agriculture releases 2020 hemp harvest numbers

Link - The Illinois Department of Agriculture released final harvest numbers from the 2020 hemp growing season.

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Subject: March 9 -- Climatewire is ready

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CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Tue., March 9, 2021

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2. ENERGY TRANSITIONS:
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Biden wants to end oil subsidies. First he has to find them

CLIMATE IMPACTS

4. SCIENCE:
Foes erupt over bid to mimic sun-blotting volcanic dust

POLITICS

5. REGULATIONS:
Economists: E.U. metric trumps social cost of carbon

IN THE STATES

6. ARIZONA:
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Message

From: Enos, Kendra [Enos.Kendra@epa.gov]
Sent: 3/4/2021 4:54:21 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips: Morning Edition 3-4-21

Daily News Clips - Morning Edition
March 4th, 2021

Air
Council and EPA in joint project to improve air quality
Superfund
EPA answers lingering questions about possible Superfund cleanup in Ann Arbor
Texas cold snap froze cleanup efforts at some Superfund sites
Water
EPA OKs selenium rule for Koocanusa
NJDEP Sues The United States Over PFAS Contamination
Wildlife
Barrett writes first majority opinion, in wildlife protection case
Justice Amy Coney Barrett pens first majority Supreme Court opinion in FOIA dispute

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Air
Council and EPA in joint project to improve air quality
https://www.leitrimobserver.ie/news/carrick-on-shannon/614600/council-and-epa-in-joint-project-to-improve-air-quality.html

MONITOR SITUATED BESIDE N4 IN CARRICK-ON-SHANNON
4 Mar 2021

Council and EPA in joint project to improve air quality
The air quality monitor adjacent to the N4 in Carrick-on-Shannon

Leitrim County Council and the Environmental Protection Agency (EPA) have installed a new automatic ambient air quality monitor in Carrick-on-Shannon to provide real time air quality data.

The Carrick-on-Shannon monitor is located beside the N4 national primary road, close to the junction with the R280 regional road. The site was chosen as the optimal location to monitor traffic-related emissions and emissions from the Carrick-on-Shannon area in general.

The new equipment was commissioned into service in December and provides data on Particulate Matter (PM) levels and Nitrogen Dioxide (NO2) – pollutants which pose significant risks to human health in Ireland.

The project is part of the National Ambient Air Quality Monitoring Programme (AAMP) 2017-2022 which is funded by the Department of the Environment, Climate and Communications and was jointly implemented by Leitrim County Council and the EPA.

Under the AAMP programme, the EPA together with Local Authorities is expanding and upgrading the monitoring network and enhancing the Air Quality Index for Health (AQIH) to provide improved reporting of air quality and potential health impacts. To date under the AAMP, the number of air monitoring stations has been increased from 30 to 88; in addition, 15 of the existing stations have been upgraded to provide near-real time data.

Air Quality has a significant impact on public health, and poor Air Quality is a major contributor to premature deaths. The European Environmental Agency (EEA) estimates that there are over 1,300 premature deaths annually in Ireland attributable to exposure to air pollution.

Particulate Matter and Nitrogen Dioxide (NO2) are the most significant pollutants. Fine Particulate Matter (PM2.5), especially from domestic solid fuel burning, is the air pollutant posing the greatest risk to health in Ireland.

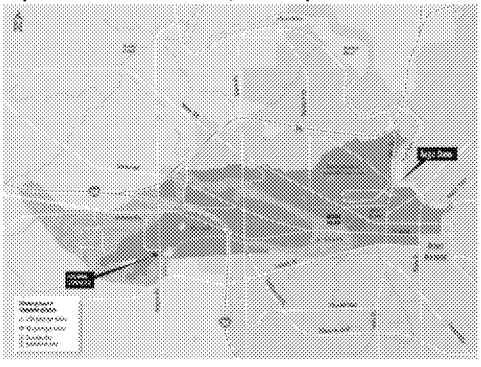
The data collected by the national monitoring network is used to generate the Air Quality Index for Health (AQIH), which provides information to the public on potential risks to health from poor air quality. The Air Quality Index for Health can be viewed at: http://www.epa.ie/air/quality/index/.

The air monitor in Carrick-on-Shannon monitors Nitrogen Dioxide and PM2.5 and PM10 (particulates of diameter less than 2.5 microns and less than 10 microns, respectively), and reports data automatically on a near real-time basis. Air Quality data for the monitoring station in Carrick-on-Shannon is available at: https://airquality.ie/station/EPA-80.

Superfund

EPA answers lingering questions about possible Superfund cleanup in Ann Arbor
https://www.mlive.com/news/ann-arbor/2021/03/epa-answers-lingering-questions-about-possible-superfund-cleanup-in-ann-arbor.html

EPA answers lingering questions about possible Superfund cleanup in Ann Arbor
Updated 11:10 AM; Today 11:10 AM



A map of the Gelman dioxane plume spreading through the Ann Arbor area, moving east through the city's west side toward West Park and branches of the Allen Creek drain system that discharge to the Huron River. Gelman Sciences is removing water from the ground using extraction wells and then treating it to remove dioxane. Treated water with lower levels of dioxane is then discharged to Honey Creek, which flows to the Huron River upstream of Barton Pond, Ann Arbor's main municipal water supply.

By Ryan Stanton | ryanstanton@mlive.com
ANN ARBOR, MI — Local officials have been asking questions and now they have more answers.

The U.S. Environmental Protection Agency has offered more clarity about what it could take to get the Gelman dioxane plume on the National Priorities List and positioned for a federal Superfund cleanup under the EPA's watch.

The process could take several years, the EPA told local officials this week in written answers to questions, describing the many steps involved in getting to a cleanup.

Toxic plumes of pollution like the one that's been spreading through the Ann Arbor area's groundwater for decades, coming from the old Gelman Sciences filter manufacturing complex off Wagner Road, are placed on the National Priorities List after the EPA and state agree addressing the contamination under the Superfund program is the best option.

"EPA will not generally proceed with listing a site on the NPL absent a formal state request," the EPA wrote. "NPL listing determinations are made by EPA after taking into account comments and input from all appropriate stakeholders."

Ann Arbor-area officials still waiting to hear if Whitmer will support Superfund cleanup

Local officials from multiple jurisdictions in Washtenaw County have been trying to figure out the best course of action for addressing the Gelman plume, whether that means seeking a more aggressive cleanup strategy overseen by the state through litigation in court, or turning to the EPA.

As it stands now, both options are simultaneously being pursued and the parties are due back in court this month, while local officials are still waiting to hear if Gov. Gretchen Whitmer will support petitioning the EPA for a Superfund cleanup.

The EPA is not a party to the consent judgement between the state and polluter that governs how the miles-long plume is managed, nor has the EPA been part of the legal negotiations over the last several years that fell short of achieving a new cleanup plan.

The EPA is not taking a position in the court case, nor has it taken a position on consent judgment terms. As for whether the litigation needs to conclude before the Superfund process can go forward, the EPA says no.

"EPA is not a party to this action and cannot dictate its terms," the EPA wrote. "Even if EPA pursues listing the site on the NPL, EPA will not require that the state court litigation be ended, or the terms of a consent judgment to be changed."

In the meantime, it's in the interest of all parties that the state and polluter work together to monitor and control the pollution consistent with state requirements, the EPA wrote. Gelman, as it has for many years, is continuing to do some pump-and-treat remediation, though local officials argue it's not enough.

The EPA already has completed some steps necessary for potentially placing the plume on the National Priorities List. In response to a 2016 petition from local township officials and the Sierra Club, the EPA worked with the Michigan Department of Environment, Great Lakes and Energy to conduct a preliminary assessment that determined the plume was eligible for further consideration, but then-Gov. Rick Snyder didn't support it going forward. Ann Arbor and Washtenaw County officials also didn't support the Superfund petition at the time.

"Though the site was determined eligible for further evaluation as an NPL site, at that time Michigan requested to continue addressing the Gelman contamination under its state enforcement authority," the EPA wrote. "As such, Michigan reports to EPA annually on the progress of its Gelman cleanup efforts."

Another preliminary assessment is not needed if the EPA decides to pursue listing the Gelman plume, though it would take about three additional years to go through the listing process, the EPA estimates, noting there is no guarantee the plume would make the list and the listing could be challenged in court, for example, if Gelman opposes it.

If the plume makes the list, the EPA would become the lead enforcement agency and negotiate to have Gelman conduct an investigation to study the extent of the contamination, as well as a feasibility study evaluating remediation options.

"The timeline for these negotiations is variable, but generally it takes several months to a year," the EPA wrote, adding the studies could then take a few years to several years or longer.

After the feasibility study is complete, the EPA says it would select a remedy and issue a record of decision, and it could incorporate appropriate requirements of the state consent judgment into the Superfund cleanup remedy.

The next step would be the negotiation of a federal consent decree for completion of a Superfund cleanup with the polluter implementing the selected remedy.

If at any time the EPA finds it necessary to implement emergency measures to address an imminent and substantial danger, that option is available, too, the EPA said.

Local officials are most concerned about the plume potentially poisoning Ann Arbor's main drinking water supply from Barton Pond, as well as township residents with well water. Potential vapor intrusion into homes is another concern, since there's dioxane in shallow groundwater in parts of Ann Arbor's west side.

Dioxane is classified by the EPA as likely to be carcinogenic to humans by all routes of exposure. It also can cause kidney and liver damage, and respiratory problems.

"At this time, EPA is not familiar enough with data that has been collected at the Gelman site to determine if it would contribute to efficiencies in our process to evaluate and address site contamination under the Superfund NPL process," the EPA wrote. "The timeline for design and cleanup work at an NPL site is also highly variable, taking from a few years to several decades. At more complex sites, such as Gelman, EPA can evaluate segments of the contamination to identify and implement interim cleanup actions early in the process, followed by additional interim action(s), and a final cleanup action."

Local officials from multiple jurisdictions are planning to have a joint meeting soon to discuss next steps.

This week's meeting of the Coalition for Action on Remediation of Dioxane was attended by dozens of people, including U.S. Rep. Debbie Dingell and representatives from EGLE and the state attorney general's office, said City Council Member Kathy Griswold, D-2nd Ward, noting Dingell revealed the EPA's new information about the Superfund process.

"The new information addresses many of our outstanding questions, especially the (dual) paths with the court case continuing while the EPA conducts the determination phase," Griswold said.

Oral arguments in the legal case are set for March 22 before Washtenaw County Circuit Court Judge Tim Connors.

Superfund

Texas cold snap froze cleanup efforts at some Superfund sites
https://www.theverge.com/2021/3/4/22312189/texas-freeze-superfund-site-cleanup-epa

It's not the first time extreme weather has compromised Superfund sites, and it won't be the last

By Justine Calma@justcalma Mar 4, 2021, 11:00am EST

Houston Area Begins Slow Recovery From Catastrophic Harvey Storm Damage
A sign is posted in front of the Brio Superfund site on September 4, 2017 in Friendswood, Texas. Thirteen Superfund sites in Texas flooded following Hurricane Harvey. Photo by Justin Sullivan/Getty Images
Texas' deep freeze was the latest warning that extreme weather events threaten to derail efforts to clean up the most toxic sites in the US. In a worst-case scenario, a natural disaster can unleash buried toxic substances. But even minimal damage or the mere threat of a storm can stop or slow cleanup efforts.

That vulnerability could become a bigger problem as climate change brings about more weather-related disasters. For years, experts have pushed the Environmental Protection Agency to prepare for the onslaught.

"We have over two dozen Superfund sites here in our county, and we are one of the most threatened coasts in the world by natural forces," says Jackie Young-Medcalf, executive director of the Houston-based nonprofit Texas Health and Environment Alliance. "As long as the waste remains in place … It's at risk for impacts from Mother Nature."

SUPERFUND SITES LOST POWER OR PREEMPTIVELY STOPPED OPERATIONS
Efforts to control hazards at some toxic Superfund sites in Texas temporarily halted as a result of the deep freeze that battered the state's infrastructure in February. Superfund sites are places so polluted that they were placed on a

National Priorities List for cleanup. Several of these sites lost power or preemptively stopped operations during the freeze, according to the Environmental Protection Agency. At least four sites sustained minor damage like cracked pipes.

After winter storms knocked out power and water systems, the EPA assessed 16 Superfund sites in Texas, Arkansas, and Louisiana for problems. The damage it found didn't lead to any contaminants being released, the EPA told The Verge in an email.

But the storms did manage to freeze some Superfund operations, at least temporarily. One of the Superfund sites that Young-Medcalf's group has monitored over the years, the Jones Road Groundwater Plume in Harris County, was damaged during the recent cold snap. The EPA found leaking valves and ruptured pipes and fittings at the site following the winter storms. The affected equipment will come back online after repairs are made, the agency said. And short-term lapses in operations at the site won't affect the long-term strategy for containing or cleaning up hazards, according to the agency.

In the meantime, residents are anxious for cleanup operations to resume. "It's certainly slowing down the cleanup process because the unit is not fully operable, you know, it can't perform," says Young-Medcalf. "What that ultimately means is that the plume of vapors that [the treatment system] was once extracting from is sitting there, largely undisturbed."

DISASTERS HAVE PUT SUPERFUND SITES — AND SURROUNDING NEIGHBORHOODS — IN PERIL

Jones Road was polluted by a dry cleaning business in a strip mall. Chemicals the business used from 1988 until it shut down in 2002 wound up contaminating nearby private water wells with tetrachloroethylene, also called perchloroethylene (PCE). PCE in drinking water has been linked to a higher risk of epilepsy and cancer in people exposed in early childhood. Since then, cleanup has involved plugging up wells and pulling vapors from contaminated soil.

Disasters have put Superfund sites — and surrounding neighborhoods — in peril in the past. Hurricane Harvey's flood waters broke a protective cap at the San Jacinto Waste Pits in 2017, releasing cancer-causing chemicals, dioxins, into the nearby river. Like many Superfund sites, the prescription for addressing pollution was to contain it on site. But after the protective cap failed during Harvey, the EPA decided to remove the chemicals.

"There's not anything that man can make that is going to withstand the changes of this river and the forces of Mother Nature that go on there," Medcalf-Young says. The issue now is that removing the chemicals from San Jacinto will take at least seven more years. And with storms growing stronger because of climate change, time is working against cleanup efforts. "Seven more years is seven more hurricane seasons," Medcalf-Young says.

"SEVEN MORE YEARS IS SEVEN MORE HURRICANE SEASONS."

That's one of the more daunting problems facing already established Superfund sites. Strategies to clean up and contain these sites were likely designed to address weather-related risks the location has faced in the past, says Jim Blackburn, an environmental law professor at Rice University. But climate change is creating new normals that remediation plans might not have taken into consideration.

"We've seen 100-year rain fairly often around here. These terms have lost their meaning because we have so many severe rainstorms," Blackburn says. "We're facing something that's changing going into the future. And I don't think we're very good at understanding how to evaluate that, address it, and plan for it."

Superfund sites are evaluated every five years if the location still has contaminants at high levels. That's when the EPA will consider if any changes need to be made because of any additional risks posed by climate change, a spokesperson for EPA's Region 6 office, which includes Texas, said in an email.

"The Agency's new leadership team is aware of the issues involved in climate change and Superfund sites, and will be working with EPA staff to determine next steps to build on the Superfund program's existing climate change approaches," a spokesperson for EPA headquarters said in an email. It's a reversal from the EPA's approach under

former president Donald Trump, when leadership backtracked on previous efforts to incorporate climate change into the agency's work.

About 60 percent of all non-federal Superfund sites are in places where they're vulnerable to flooding, storm surge, sea-level rise, and wildfires made worse by climate change, according to a 2019 report by the Government Accountability Office. That report didn't investigate how those events or other challenges might delay cleanup, but it's something the agency is interested in looking into in the future if Congress makes an inquiry (the GAO conducts investigations at the behest of Congress).

"You can imagine that if an area is flooded and inaccessible, that whatever cleanup might have been going on is suspended," says Alfredo Gómez, director of natural resources and environment at the GAO. He says the agency would like to look into what kinds of challenges affect the pace and scheduling of Superfund cleanups.

"Now we know that our future from climate change is going to be potentially affected by more frequent and intense storms," says Gómez. "How can we still ensure that these sites are going to be more protected?"

Water

EPA OKs selenium rule for Koocanusa
https://www.spokesman.com/stories/2021/mar/04/epa-oks-selenium-rule-for-koocanusa/

By Rob Chaney
The Missoulian
MISSOULA – The U.S. Environmental Protection Agency adopted a new standard for selenium waste in Montana's Kootenai River and Koocanusa Reservoir last Thursday, after the Legislature dropped plans to revoke the state rule.

"EPA's action is based on a thorough technical review of the State's submission and a determination that the adopted standards are based on sound science and consistent with the Clean Water Act," EPA spokeswoman Laura Flynn Jenkins wrote in an emailed statement.

"Montana's revised standards will strengthen ongoing efforts to address selenium concerns in surface waters, fish and aquatic life within the Kootenai River watershed."

The stricter standards were applauded by the Kootenai Tribe of Idaho. Tribal biologists have documented high levels of selenium in burbot swimming in Idaho's Kootenai River.

"Unfortunately, everywhere we look for it we find it and we find it in concerning concentrations," said Genny Hoyle, a fisheries biologist for the Kootenai tribe.

Last March, tribal biologists analyzed tissue from 30 burbot pulled from the Kootenai River system. While research is ongoing, Hoyle said they found high levels of selenium in the sampled fish livers.

The EPA announcement came three days after Sen. Mike Cuffe, R-Eureka, led testimony before the state Senate's Natural Resources Committee on Senate Bill 324, which would order the Montana Department of Environmental Quality to revoke the selenium standard it approved last November. That bill died in committee Friday evening on a 7-5 vote.

At the earlier hearing, Cuffe and others argued the standard was adopted in a rushed process without complete information and would harm the economy of Lincoln County. He also claimed that the Canadian coal company Teck Resources Ltd., which is responsible for all the selenium coming into the watershed, was making efforts to clean up the problem.

Selenium is a naturally occurring trace element necessary for good health in many organisms, including fish and humans, in minuscule amounts. It becomes hazardous in slightly higher amounts.

State and federal studies over the past six years have shown the amounts flowing into Koocanusa and the Kootenai are harming fish reproductive organs. Teck and other Canadian coal companies have announced plans for major expansions of their mining operations in the watershed.

The DEQ, and now EPA, standards limit selenium to 0.8 micrograms per liter in the Koocanusa reservoir water and 3.1 micrograms per liter in the Kootenai River. DEQ Director Chris Dorrington pointed out those standards are for fish health and not the same as selenium levels for human drinking water.

On Friday, Cuffe said he believed his efforts were not intended to benefit Teck or the Canadian coal mining. He said he wasn't aware the water quality standard was going to be so low, and thought it would hurt real estate sales or future timber industry activity.

Removing the state rule would put Montana in conflict with the federal Clean Water Act and could expose it to liability claims from water users, including the state of Idaho, Native American tribes and fishing guides concerned about damaged fish populations, according to Michael Jamison of the National Parks Conservation Association, which participated in the selenium standard development.

"We're taking on a tremendous amount of liability on behalf of a foreign coal company that produces zero jobs and zero revenue for the state of Montana," Jamison said on Friday. "If we open this back up, given the science we knew at the time we signed, it, I think it's highly likely the EPA would require an even stiffer guideline."

Confederated Salish and Kootenai Tribal Council Chairwoman Shelly Fyant questioned Cuffe's claim of a rushed process in a letter to the Natural Resources Committee on Tuesday.

"If something was rushed regarding selenium in Koocanusa, it is that the legislative hearing for this bill appears to have been posted on a Saturday, only to close sign-ups for remote testimony the next day," Fyant wrote.

"Selenium contamination in Lake Koocanusa is clearly and scientifically tied to coal mines in the Elk River watershed of British Columbia (it has been demonstrated that it is not 'background' and not from U.S./Montana sources)," Fyant continued.

"We have years of data for the Elk River and Lake Koocanusa definitively demonstrating that selenium and nitrates from the Canadian mines are degrading – in Montana – water quality, fish and all life that depends on those waters."

Water

NJDEP Sues The United States Over PFAS Contamination
https://www.jdsupra.com/legalnews/njdep-sues-the-united-states-over-pfas-8120770/

On January 14, 2021, the New Jersey Department of Environmental Protection ("NJDEP") filed suit against the United States to compel the United States to address immediately contamination of New Jersey groundwater with PFOA and PFOS from facilities owned or operated by the United States. The suit, which was brought pursuant to the federal Safe Drinking Water Act ("SWDA") and the New Jersey Safe Drinking Water Act (NJSWDA"), alleges that the use of AFFF at federal facilities caused the contamination, which presents an imminent and substantial endangerment to drinking water supplies in New Jersey. NJDEP seeks injunctive relief ordering the United States to control the source of PFOS and PFOA, to remediate the PFOS and PFOA, to provide alternate water supplies, and to conduct medical monitoring for New Jersey residents who have been exposed. NJDEP also seeks recovery of its reasonable costs for investigation and remediation of the PFOA and PFOS contamination above New Jersey drinking water standards. New Jersey drinking water standards for PFOS (13 ppt) and PFOA (14 ppt) are considerably lower than EPA's Lifetime Health Advisory level ("HAL") of 70 ppt.

The complaint asserts that in the case of an imminent and substantial endangerment to human health where the United States has caused or contributed to the endangerment, NJDEP has the authority to institute an action against the United States because NJDEP has primary enforcement authority under the SDWA and the SDWA includes a provision requiring

federal agencies to comply with all requirements of the SDWA pertaining to public water systems. The complaint further alleges that under the savings provision of the NJSWDA, federal sovereign immunity is waived and NJDEP has the authority to file an action for private wells.

The complaint focuses on the use of AFFF at Department of Defense operations at Joint Base McGuire-Dix-Lakehurst ("JBMDL"), Naval Weapons Station Earle, and Naval Air Warfare Center Trenton noting that "a single firefighting training event can release thousands of gallons of foam-laced water into the environment" and "decades of AFFF use throughout JBMDL has demonstrably contaminated groundwater on and around the joint base." The complaint alleges that the United States failed to take sufficient action to protect off-site drinking water supplies near JBMDL, which forced NJDEP to conduct its own sampling and provide an alternate water supply for off-site residents. Further, the complaint alleges that the United States had not taken any action to address contamination in off-site private wells down-gradient of Naval Weapons Station Earle that exceed the New Jersey drinking water standards but do not exceed the EPA HAL.

The complaint was filed in the AFFF Multi-District Litigation in federal court in South Carolina, but NJDEP did not waive its designated home venue of New Jersey, thus preserving its ability to challenge venue at a later time.

[View source.]

Wildlife

Barrett writes first majority opinion, in wildlife protection case
https://www.washingtonexaminer.com/news/barrett-writes-first-majority-opinion-in-wildlife-protection-case

After a busy first six months on the Supreme Court, Justice Amy Coney Barrett on Thursday wrote her first majority opinion in a case involving the Environmental Protection Agency and Freedom of Information Act requirements.

Barrett's opinion, which was joined by the court's five other conservative members and Justice Elena Kagan, focused on a dispute over the EPA and other environmental agencies and the Sierra Club, an environmental organization seeking to view the agency's consultations with the U.S. Fish and Wildlife Service. The court found that the government agencies were protected from FOIA inquires because of the "deliberative process privilege," meaning that draft documents can be withheld from public view.

"Because the decision-makers neither approved the drafts nor sent them to the EPA, they are best described not as draft biological opinions but as drafts of draft biological opinions," Barrett wrote of the Fish and Wildlife Service's consultations with the EPA.

The Sierra Club, before reaching the high court, was attempting to obtain documents related to an EPA rule that would protect fish from dying in cooling water tanks. The U.S. 9th Circuit Court of Appeals previously ruled in favor of the Sierra Club.

Justices Stephen Breyer and Sonia Sotomayor dissented, with Breyer writing that in his view, the "key difference between a Draft Biological Opinion and a Draft of a Draft Biological Opinion" is that the former is, in a sense, a "final" document.

Barrett, since her confirmation to the Supreme Court last October, has played an instrumental role in swinging decisions in the court's so-called shadow docket. In her first notable action, Barrett was the decisive vote in allowing New York churches and synagogues to ignore Gov. Andrew Cuomo's pandemic gathering restrictions.

Barrett's vote in that case opened the door for the court to give favorable decisions to churches in New Jersey, Colorado, and California, among other states.

Barrett also surprised many court watchers in January when she joined the liberal wing of the court to stop an Alabama death row inmate from being executed without his pastor present.

Wildlife

Justice Amy Coney Barrett pens first majority Supreme Court opinion in FOIA dispute
https://www.cbsnews.com/news/amy-coney-barrett-supreme-court-majority-opinion-foia-dispute/

Washington — The Supreme Court on Thursday shielded draft documents from a pair of federal agencies from disclosure under a widely used federal public records law, with Justice Amy Coney Barrett authoring her first majority opinion since joining the high court in October.

The Supreme Court ruled 7-2 in favor of the U.S. Fish and Wildlife Services and National Marine Fisheries Service in their dispute with the Sierra Club, which sought records related to the services' consultations with the Environmental Protection Agency (EPA) under the Freedom of Information Act (FOIA). Justices Stephen Breyer and Sonia Sotomayor dissented.

The legal battle stems from a rule the EPA proposed in 2011 regarding "environmental water intake structures," which are used to cool industrial equipment. The agency consulted with the Fish and Wildlife Service and National Marine Fisheries Service before proceeding with its measure, as marine wildlife can become trapped in the structures and die.

The two services issued draft "biological opinions" in late 2013 in response to the proposed rule, which found it was likely to jeopardize certain species, though the documents were never sent to the EPA. The following year, in March 2014, the EPA sent another proposed rule that differed from the earlier 2013 version.

In response to the 2014 proposed rule, the services issued a final "no jeopardy" biological opinion, finding the revised rule was unlikely to harm protected species. The EPA then issued its final rule.

The Sierra Club submitted requests under the Freedom of Information Act for records related to the services' consultations with the EPA. But the services invoked a FOIA exemption that protects "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency," and declined to turn over the draft biological opinions that analyzed the 2013 proposed rule from the EPA.

The Sierra Club then sued to obtain the documents, and the U.S. 9th Circuit Court of Appeals found the draft biological opinions were not privileged.

But the Supreme Court reversed the lower court's decision, finding the deliberative process privilege shields the draft opinions because they reflect a preliminary review about the proposed, not final, rule.

"It is true, as Sierra Club emphasizes, that the staff recommendations proved to be the last word within the Services about the 2013 version of the EPA's proposed rule," Barrett wrote in her 11-page opinion. "But that does not change our analysis. The recommendations were not last because they were final; they were last because they died on the vine."

The staff recommendations, she wrote for the majority, were "part of a deliberative process that worked as it should have."

"The deliberative process privilege protects the draft biological opinions from disclosure because they are both predecisional and deliberative," the court found.

The opinion from Barrett is her first for a majority of the Supreme Court. In a dispute involving California's restrictions on indoor worship services to mitigate the spread of the coronavirus, Barrett authored a concurring opinion, in which she was joined by Justice Brett Kavanaugh.

Barrett was appointed to the Supreme Court by former President Donald Trump in October following the death of Justice Ruth Bader Ginsburg. Her nomination was controversial, as the vacancy on the high court came just weeks before the 2020 presidential election.

Democrats contended, as Republicans did in 2016 after the death of Justice Antonin Scalia, that the voters should be able to choose the president who would fill the seat. But the GOP-led Senate charged ahead with Barrett's nomination, confirming her to the Supreme Court a week before Election Day.

First published on March 4, 2021 / 11:17 AM

Message

From: Agri-Pulse Daily Harvest [sara@agri-pulse.com]
Sent: 2/17/2021 11:18:10 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Agri-Pulse Daily Harvest 2/17/2021

Agri-Pulse Daily Harvest 2/17/2021

Agri-Pulse Daily Harvest

Agri-Pulse Daily Harvest -- 2/17/2021

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FARM & RURAL POLICY

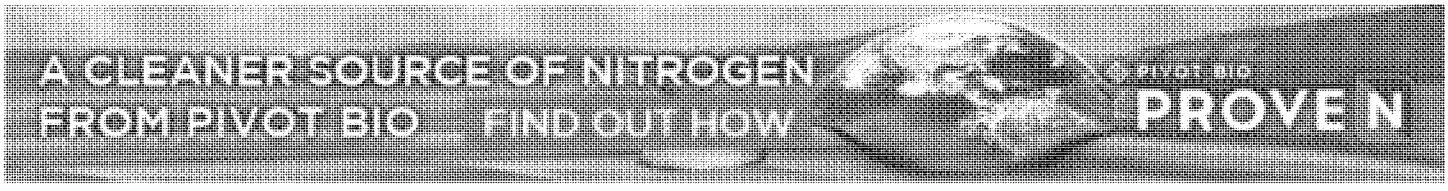
Agri-Pulse: Daybreak for February 17, 2021

Link - (Audio) Ex-chairman ready to work on climate legislation * Tai must wait * GM defends its drive to EVs.

Agri-Pulse: DriveTime: February 16, 2021

Link - (Audio) The National Ethanol Conference begins today and the leader of a national ag organization suggests there's middle ground in climate discussions between environmentalists and farmers.

Axios: Agribusiness group readies to lobby on climate change
Link - A coalition of agribusiness and environmental groups focused on climate policy has formally registered to lobby.



ENERGY

Bloomberg: Once Wary Ethanol Market Hails Potential of Clean-Fuel Policy
Link - Ethanol producers that once opposed California's Low Carbon Fuel Standard are now wondering how fast the emissions-cutting policy can expand across the U.S.

Southernminn.com: Gov. Walz pushes for subsidized biofuels but economists warn
Link - Gov. Tim Walz asked for President Joe Biden's continued support for the biofuels program last week, despite economists' concerns over concerns about biofuels' inefficiency and costs.

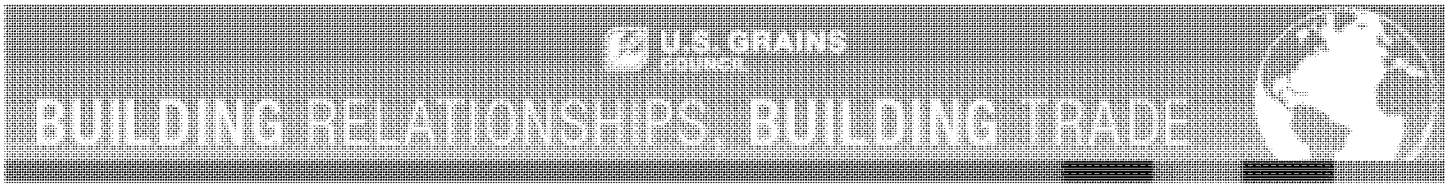
Bloomberg: Deep Freeze Snarls U.S. Grain Shipments, Slows Ethanol Plants
Link - Energy costs have soared, prompting some ethanol and soybean processing plants to slow down.

Milwaukee Journal Sentinel: WEC Energy proposes a $400 million project that combines solar power and battery storage, enough to power 60,000 homes
Link - WEC Energy Group, the parent company of We Energies and Wisconsin Public Service, has proposed building the state's first project that would combine solar power with battery storage.

WVVA TV: West Virginia solar energy project clears regulatory hurdle
Link - The PSC says the power generated from the solar facility will be sold into a regional wholesale market.

Forbes: Wind Power Isn't To Blame For Texas' Electricity Crisis

Link - In reality, wind turbine outages have been responsible for less than 13% of Texas' total power shortages



FOOD & NUTRITION

Meat + Poultry: Texas A&M investing in poultry science department

Link - Texas A&M University recently announced an $850,000 financial commitment to help grow the College of Agriculture and Life Science's poultry science department.

Associated Press: Seal oil makes menu at Alaska care home

Link - Seal oil has been a staple in the diet of Alaska's Inupiat for generations.

FoxNews: IHOP cancels International Pancake Day, offers free stacks for April instead

Link - Not even pancakes can avoid the effects of the pandemic.

MIT Technology Review: Bill Gates: Rich nations should shift entirely to synthetic beef

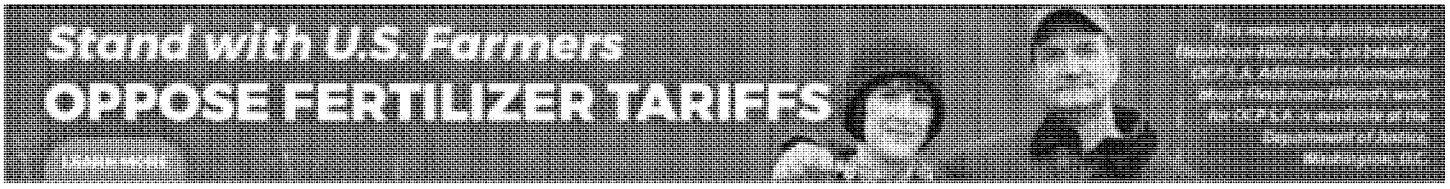
Link - In his new book, How to Avoid a Climate Disaster, Bill Gates lays out what it will really take to eliminate the greenhouse-gas emissions driving climate change.

KHOU: Texas agriculture commissioner issues 'red alert' for food supply chain

Link - Farmers and ranchers are seeing devastating effects from the cold weather on livestock, feed and agriculture products, according to Miller.

KPNX: Phoenix farm helps to fight food deserts in the Valley

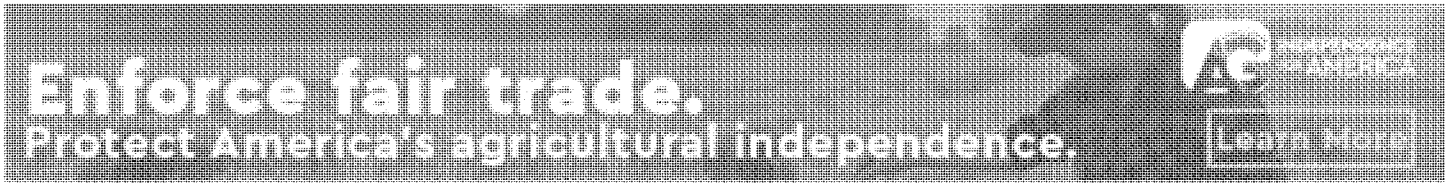
Link - In 2015, a community rallied together to turn a plot of land into an urban farm. Six years later, the farm is a vibrant part of the neighborhood.



TRADE & INTERNATIONAL

Bloomberg: Deep Freeze Upends U.S. Agriculture Markets From Grains to Beef
Link - Cargill, the world's largest agricultural commodities trader, is reducing its energy usage and working with suppliers and customers to minimize disruptions.

The Press and Journal: Suicide toll on UK farming revealed
Link - Shocking statistics highlighted by the Farm Safety Foundation (FSF) show 133 people in UK farming and the associated agricultural trades took their own lives in 2019-20, 31 of them in Scotland.



LABOR & IMMIGRATION

WZZM: Farm, agriculture workers to be eligible for COVID-19 vaccine starting in March
Link - Previously, this population would not have been eligible until May.

KABC-TV: Help for farmworkers during pandemic: Local organizations collect, distribute donated essential items, PPE to farmworkers in Oxnard
Link - Farmworkers help bring food to our tables each day, but in this pandemic, many have not been getting the help they need. Several local organizations are trying to change that.

Santa Barbara Independent: Some Cannabis Workers Can Get Vaccinated Right Now
Link - The state of California classified certain cannabis industry workers under the medical worker tier, making them eligible to get vaccinated for COVID-19 ahead of grocery store workers, teachers, and others.

NBC Palm Springs: Gov. Newsom expected to focus on vaccine strategy for Coachella Valley farmers
Link - During his trips to northern California and other areas, he's discussed the need to prioritize marginalized groups. Later this week, the Governor is expected to focus on the Coachella Valley farming community.

CNN: Democrats and Biden prepare to unveil bill that would provide a pathway to citizenship for undocumented immigrants
Link - The Biden administration, in concert with Hill Democrats, is preparing to unveil legislation this week that seeks to provide a pathway to citizenship to the 11 million undocumented immigrants living in the United States.

CONSERVATION & WILDLIFE

Gizmodo: Thousands of Stunned Sea Turtles Are Being Rescued From the Texas Freeze
Link - The abnormally cold temperatures in Texas aren't just affecting people. They're also causing sea turtles to freeze up in the ocean, leaving volunteers scrambling around-the-clock to save thousands of the creatures washing up on the Gulf Coast.

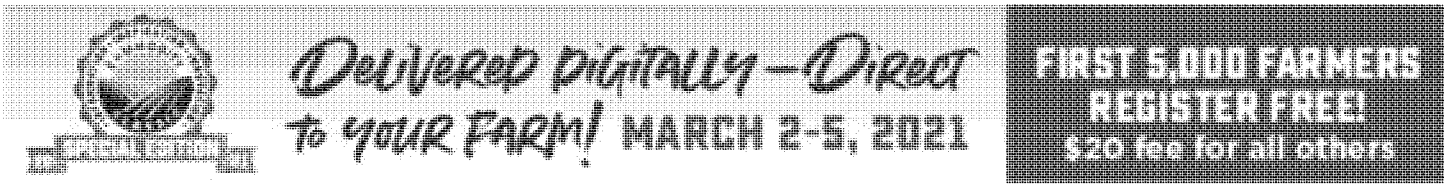
Reuters: Boeing backs Trump airplane emissions rules challenged by U.S. states
Link - Boeing Co on Tuesday backed first-ever fuel efficiency standards for new airplanes finalized by

the Trump administration in its waning days that a dozen U.S. states have challenged as too lenient, and that President Joe Biden's administration is reviewing.

Bloomberg: How the Warming Arctic Helped Drive a Deep Freeze Into Texas
Link - The Earth's poles are warming faster than anywhere on the planet. While the consequences of that aren't completely understood, it's becoming apparent that many of the world's extreme weather events owe the Arctic at least some of the credit.

The Gazette: Iowa DNR rolls out smartphone-based body cameras for conservation officers and park rangers
Link - Iowa's conservation officers and state park rangers are state-certified peace officers with full law enforcement authority, Bruner said.

INSIDER: It's so cold in the South that families are bringing their farm animals inside
Link - As cold weather continues to batter the South, some farms are bringing their livestock indoors.



MISCELLANEOUS

The Daily Yonder: Rural Covid-19 Cases Drop While Rural Death Rate Holds Steady
Link - The impact of the winter surge continues to be felt in the number of Covid-related deaths that occurred in rural America last week.

CBS New York: Animal Therapy At Allaire Community Farm Working Wonders For Folks Stressed Out By Pandemic: 'Let The Animals Work Their Magic'
Link - a donkey, an alpaca, goats, a horse and more are just a few of the more than 100 farm animals on Allaire Community Farm's 25 acres.

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Subject: Schumer instructs committees to hold climate hearings

Schumer instructs committees to hold climate hearings

By Anthony Adragna

02/03/2021 10:13 AM EST

Senate Majority Leader Chuck Schumer has told his Democratic committee chairs to begin holding hearings focused on finding solutions to address climate change, as lawmakers prepare to try to implement President Joe Biden's agenda.

"I've already instructed the incoming Democratic chairs of all relevant committees to begin holding hearings on the climate crisis in preparation for an acting President Biden's Build Back Better agenda, which includes major climate legislation," Schumer said on the floor Wednesday. "It's long past time for the Senate to take a leading role in combating the existential threat of our time: climate."

Schumer said any action on infrastructure would prioritize climate change provisions, and he added that he looked forward to "propelling this chamber into action" and speeding the deployment of electric vehicles.

"So as the Biden administration prepares a whole-of-government approach to combating climate change, the Democratic majority will pursue a whole-of-Senate approach as well," Schumer said.

The details: The comments came as Schumer announced he and Minority Leader Mitch McConnell had reached an agreement after weeks of impasse on an organizing resolution that will formally enable Democrats to gain control of the committees. Schumer said the chamber would vote on the resolution Wednesday.

Some committees are already moving. The Energy and Natural Resources Committee this morning will hold a hearing to "Examine Global Climate Trends and Progress in Addressing Climate Change."

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https://subscriber.politicopro.com/energy/whiteboard/2021/02/schumer-instructs-committees-to-hold-climate-hearings-3986783

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Subject: How the world is fighting climate change with murky models

How the world is fighting climate change with murky models

By Zack Colman

03/16/2021 05:00 AM EDT

A new breed of data-crunching consultants has emerged to help big corporations and federal agencies assess the long-term dangers they face from climate change — everything from flooding risks for electrical substations to drought threats for supply chains.

But while those firms' computerized projections may help satisfy shareholders' and activists' demands for fuller risk disclosures and stronger actions to counter the threats, scientists warn that the data may be too unreliable to guide the precautions that governments, businesses and retirement fund managers must take in the coming decades, creating a false sense of security.

Even worse, the climate analytics firms often shield their data models from public scrutiny as proprietary information, unlike the computer models that academic and government researchers typically rely on for their less granular projections of the warming planet. That makes it impossible to independently validate their work, scientists say.

"Do these guys know what they are doing? I'm not convinced that they do," said Upmanu Lall, director of the Columbia Water Center at Columbia University, who has reviewed some firms' methodologies. "Your models are garbage. And, unfortunately, that's a problem."

"It's not that [they] have some special sauce," said Rutgers University climate scientist Robert Kopp, who contributes to climate analytics service firms Rhodium Group and First Street Foundation, which publish their methodologies. "[They] don't want to talk about what you're doing."

Federal agencies that set public climate policy have been turning to these firms to weigh the flood risks to homes and for post-disaster rebuilding efforts to ensure new structures can withstand the effects of the changing climate.

The Federal Deposit Insurance Corp., Federal Emergency Management Agency, National Oceanic and Atmospheric Administration, Department of Housing and Urban Development, Federal Housing Finance Agency and NASA all have met with such firms to explore tools purporting to help protect taxpayers, banks and homes from rising seas, worsening rainstorms and severe droughts linked to climate change.

Some firms deny that they've shielded their methodologies from clients, saying that transparency is important to build confidence in their work, even if they don't broadly disseminate their models.

"Our methodology is documented, shared with and discussed with any customer that wants that level of detail, and over and over again we pass scrutiny on the methodology," Jupiter Intelligence CEO Rich Sorkin said. "We

are heavily opposed to black boxes, but there's a big difference between black boxes and publicly disclosing to everyone in the world exactly how things are in the most detailed level."

HUD has hired Jupiter Intelligence as part of a $150,000 coastal modeling project to weigh flood protection systems against various sea-level rise scenarios. Rhodium Group, which publishes its methodology, received a $179,000 National Science Foundation grant last year to study the public health effects and socioeconomic costs of rising temperatures and wildfires.

Other providers that use more familiar catastrophe models common in the insurance industry are drawing scrutiny, too. KatRisk LLC netted $463,000 in federal contracts last year to work on FEMA's flood insurance program. Many have suggested, however, that such models do not adequately assess future climate change, leaving federal policy looking backwards.

The proliferation of providers has attracted attention from an expanding roster of federal agencies. FHFA issued a request for information on climate change in January and held a March 4 listening session with several service providers to gauge climate risk to mortgages held by government-sponsored enterprises Fannie Mae and Freddie Mac.

"To better understand the risk posed to the Enterprises, along with our RFI, we are assessing various natural disaster and climate datasets," spokesperson Raffi Williams said in an email.

Demand for the services of climate analytics firms is growing as companies seek more sophisticated tools to plan for climate outcomes. Among the big names that have engaged them are oil giant BP, electric utilities Hawaiian Electric and ConEd, cities such as Miami and New York and property investment company CBRE Global Investors.

Many of the firms build their analytical models off government-funded research, a practice that is akin to private weather companies that use a backbone of data supplied by the National Weather Service to customize their products. But unlike shifts in climate, weather forecasting is short term, and scientists worry that companies hiring the analytics providers won't keep up with the latest science or will hand off their risk management duties to the firms, leaving themselves vulnerable to nasty surprises.

“The market doesn't know what it’s asking for, which is a huge part of the problem," said Chris Sampson, co-founder and director of Fathom, a flood risk modeling firm that published its methodology in a peer-reviewed science journal. "You've got providers trying to generate solutions when we’re not even sure what the question is to ask yet."

Companies are likely to see increasing requirements to quantify the physical risks they face from climate change. Last month, the Securities and Exchange Commission began reviewing voluntary climate guidelines it issued in 2010 for public companies and could make such reporting mandatory.

That's coming amid a surge in shareholder proposals for greater transparency on climate risks and the rise of ESG investing that focuses on environmental, sustainability and governance metrics. And in addition to the new crop of small firms, the demand for data is beginning to attract big players, such as the so-called “moonshot factory” called X run by Google's parent, Alphabet.

“Can we bring you a new tool? Can we bring you new data?” Sarah Russell, team lead at X, said at a climate risk conference this month describing her firm’s strategy of reaching out to companies recently hit by disasters or floods to ink new clients. “It’s only after you’ve been hit when you realize you’ve been working with garbage data.”

The growing emphasis on broader disclosures in the U.S. is in line with efforts by government agencies around the world, many of which are adopting rules inspired by frameworks like the Task Force on Climate-Related Financial Disclosures, a voluntary climate risk disclosure reporting regime.

Many experts believe the SEC will adopt the task force guidelines in some fashion to align with mandatory rules in the EU and Japan, though some hope that both guidelines and any forthcoming U.S. disclosure rules beef up transparency around companies' physical risk vulnerabilities. The task force, for example, largely absolves companies of reporting risks from specific hazards like extreme winds, heat, drought, wildfires and ocean acidification that are linked to climate change, according to a report by the World Resources Institute .

But that type of rigorous disclosure regime will rely heavily on the climate analytics firms, which do not yet operate under a set of best practices or standards. Some climate experts warn that the advisers are overconfident given that current climate models simply aren't designed to deliver on companies' requests for narrow, specific predictions over 10, 20 or 30 years — the traditional investment and planning timeline that concerns investors, homeowners and corporations.

"How do we [companies] make our decisions in the future based on climate outputs?" KatRisk CEO Dag Lohmann asked during the recent conference. "I find it a very complicated question. We need these detailed, location-level models for that."

Emilie Mazzacurati, founder of climate analytics firm Four Twenty Seven, which was bought by credit-ratings agency Moody's in 2019, said customers are demanding specificity, yet no industry standards exist to weed out bad actors. That creates a danger that some advisers will overpromise and say they can deliver that type of forecast.

"There's a lot of pressure from clients that we experience from the market saying, 'Where's this data?'" said Mazzacurati, who is now the head of climate solutions with Moody's. "It takes a lot of commitment, dedication to say 'No,' and pass on deals and just tell the client 'I'm sorry, that this is where we're stuck, because this is how far the data will go.'"

Mazzacurati and Sorkin, of Jupiter, said they walk customers through their methodologies and show them the limitations of the models.

Sorkin said his firm helps inform the kind of scenario analysis that companies use for capital planning decisions for assets with 20- to 30-year lifetimes. Much of his firm's work has focused on Global 2000 companies, which face mandates from boards or shareholders to become better attuned to climate risk.

"Everyone's racing to build that capacity so that they understand what tools like ours are good for and what they're not good for," he said. "In every new market, there are charlatans and cheats. Customers are kind of slowly learning and sometimes easily deceived. And our view is the market will sort that out over time."

Jupiter, though, has also drawn skepticism from some climate scientists for the level of granularity it offers clients: effects of weather and climate on a scale of 1 square kilometer. A recent article in the science journal Nature Climate Change cast doubt on that level of detail, saying that climate information on scales less than 1,000 kilometers for a few years or decades into the future is "complex."

Climate models like those used by the United Nations' Intergovernmental Panel on Climate Change project out to the year 2100, with the effect of human-caused effects becoming clearer later in this century as they diverge from natural climate variability. But those scales are on continental and, at best, regional levels. Beyond that, modelers can turn to historical data, but relying on that alone could improperly project out recent trends for future years.

Sorkin, however, said Jupiter isn't trying to predict what climate will be like at that granular level in 30 years. Instead, it uses local terrain information and other data that his firm overlays with climate models to ensure engineering standards for infrastructure and investment decisions account for future, climate change-affected conditions.

Jupiter, like Four Twenty Seven, doesn't post the inner workings of its methodology publicly for peer review. The assumptions each firm uses to inform their processes are considered proprietary.

Such data points are consequential variables of the value proposition service providers offer — and could cause potential points of disagreement within the scientific community were they to be revealed. But Sorkin called that argument a "red herring," saying he would open his firm's methodology to any third party that wants to assess it.

Curtis Ravenel, a member of the TCFD's secretariat, said if the climate analytics advisers are to keep the confidence of their clients, they're going to have to open their processes for review.

"You need transparency," Ravenel said. "If you want to build trust in a market for the use of this kind of analytical tool, you've got to let the users understand the various assumptions and inputs."

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To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: The Environmental Protection Agency extends nominations deadline for the 2021 President's Environmental Student and Teacher Awards

U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
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CONTACT: press@epa.gov

The Environmental Protection Agency extends nominations deadline for the 2021 President's Environmental Student and Teacher Awards

WASHINGTON (February 18, 2021) — Today, U.S. Environmental Protection Agency (EPA) announced that it's extending the nominations deadline for their Environmental Education Presidential awards program. EPAs Office of Environmental Education will now accept applications for the 2021 President's Environmental Youth Awards (PEYA) and Presidential Innovation Awards for Environmental Educators (PIAEE) through April 30, 2021.

"Investing in our nation's students and teachers by creating opportunities to engage in real world issues will help build the next generation of environmental leaders," **said Rosemary Enobakhare, Associate Administrator, Office of Public Engagement and Environmental Education.** "Providing an extension will allow additional time for all students and teachers to submit applications for this invaluable awards program."

Since the establishment of the original Environmental Education Act of 1970, The President's Environmental Youth Award (PEYA) Program has recognized outstanding community-level environmental projects by K-12 youth for over 50 years. Today, as part of the National Environmental Education Act of 1990, PEYA continues to promote awareness of natural resources and encourages positive community involvement.

PIAEE recognizes outstanding K-12 grade educators who integrate environmental, place-based experiential learning into their classrooms.

Additional Information on the Awards

EPA is seeking PEYA and PIAEE award applications for projects on a variety of environmental topics, including (but not limited to), projects on:

- Climate Change
- Making a visible difference in Environmental Justice communities
- Reducing food waste and loss and excess food recovery efforts
- Reducing contributions to ocean and marine litter
- Solutions in recycling
- Using science, technology, engineering and math (STEM) to teach environmental education
- Environmental sustainability
- Sustainable agricultural practices
- Healthy school environments

The President's Environmental Youth Awards (PEYA) recognizes outstanding environmental stewardship projects from grades K-12 by promoting environmental awareness and encouraging community involvement. EPA will select up to two winners in each of EPA's 10 Regions – one regional winner for grades K-5, and one regional winner for grades 6-12. The winning projects will be highlighted on EPA's website. All student projects must be sponsored by at least one adult over the age of 21. And, if the sponsor is not a teacher, the project must have a teacher as a co-sponsor. The application and eligibility information are available on EPA's PEYA page.

The Presidential Innovation Award for Environmental Educators (PIAEE) recognizes outstanding K-12 teachers who employ innovative approaches to environmental education. Up to two teachers from each of EPA's 10 regions, from different states, will be selected to receive this award. Teachers will receive a Presidential plaque and an award of up to $2,500 cash to be used to further professional development in environmental education. Winning teachers' local education agencies will also receive awards of up to $2,500 cash to fund environmental educational activities and programs. Next years' winners will be highlighted on EPA's website.

The application and eligibility information are available on EPA's PIAEE page.

Applications for both awards programs are due no later than April 30, 2021.

For more information on the youth awards (PEYA), please contact: PEYA@epa.gov.

For more information on the teacher awards (PIAEE), please contact: PIAEE@epa.gov.

EPA's Office of Environmental Education (OEE) works to expand the public's environmental knowledge and enables people to effectively solve environmental problems. OEE develops training programs, provides education materials, supports environmental education publications, holds seminars and events, and administers environmental education grants and awards, please contact: education@epa.gov.

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Subject: Daily Media Clips: Afternoon Edition, 2/9/21

Daily Media Clips: February 9, 2021 (afternoon edition)

Administrator

Roll Call: Environment panel advances Regan nomination for EPA
Washington Post: Nomination of Michael Regan as EPA administrator advances
Seattle Times: Senate panel advances EPA nominee; GOP slams Interior pick

Agency

Washington Examiner: Daily on Energy, Presented by AHRI: Biden team stumbling over jobs questions

Biofuels

NGT News: Ernst, Klobuchar Introduce Bill Supporting Renewable Fuel Infrastructure

Chemicals

Insurance Journal: EPA Seeks to Test More Atlanta Properties for Lead

Enforcement

ktvz: EPA orders Amazon to halt illegal pesticide sales

Pollution

Courthouse News Service: Soot-Stained Flora and Fauna Drive DC Circuit Fight

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Environment panel advances Regan nomination for EPA

https://www.rollcall.com/2021/02/09/environment-panel-advances-regan-nomination-for-epa/
By Joseph Morton
Posted February 9, 2021 at 1:22pm

Some GOP support in the committee vote for the North Carolina regulator bodes well for his eventual confirmation by the Senate

The Senate Environment and Public Works Committee on Tuesday advanced Michael Regan's nomination to lead the EPA.

The bipartisan 14-6 vote bodes well for the nomination as it heads to the full Senate.

Committee Chairman Sen. Thomas R. Carper, D-Del., said just before the vote that Regan has brought people together in his role as secretary of the North Carolina Department of Environmental Quality.

"He's fully capable of doing that again as EPA administrator, working with all of us to address climate change and protect our air, our water, our natural resources, while helping to create good-paying jobs for the American people and strengthening our economy," Carper said. "And he's going to make sure that all of our communities and neighbors can be part of that progress."

Regan would be the first Black man to lead the 50-year-old agency that will be at the heart of the new administration's ambitious environmental agenda, including its efforts to address climate change.

[As oceans rise, Democrats put all hands on deck for climate change]

The committee's 10 Democrats all voted in favor of the nomination, along with four Republican members. A couple of the GOP senators who voted against the nomination praised Regan himself, but questioned how much authority he would have as administrator.

McCarthy anxiety
"As an individual, he is absolutely the type of person that I would like to see leading a federal agency," the panel's top Republican, Sen. Shelley Moore Capito of West Virginia, said.

While praising Regan as a thoughtful and forthright public servant, Capito criticized other members of the administration such as White House domestic climate change adviser Gina McCarthy.

Capito said she fears McCarthy and others in the administration want to return to the kinds of regulations implemented under President Barack Obama such as the Clean Power Plan and Waters of the United States.

Those policies were intended to reduce the nation's air and water pollution, but prompted complaints from industry that they were overly burdensome.

Capito said those types of regulations left deep economic scars in areas of her state and that she had to oppose Regan because he declined to rule out re-instating them. She also pointed to energy-related executive orders already being signed by Biden as evidence that the agenda will be set at the White House rather than the agency.

"I hope that if confirmed he will stand up to those who work to implement policies that leave behind working families in energy-producing states like mine," Capito said of Regan.

Sen. Sheldon Whitehouse, D-R.I., responded to Capito after the vote, citing the deep economic pain that's threatened by climate change.

"What we're doing to this planet with carbon emissions portends permanent scarring of our oceans, permanent scarring of the fisheries that Rhode Islanders depend on, permanent scarring of our very coastline," Whitehouse said.

Carper offered that he's already had conversations with Capito and others about "doing something real" for job creation in particularly hard-hit states such as West Virginia, where he was born.

For starters, he cited the possibility of a multi-day workshop in the near future to examine the issue.

"It's very sad, if you go there, to see what has happened to the economy in the communities in which my sister and I were born and raised," Carper said.

Nomination of Michael Regan as EPA administrator advances
https://www.washingtonpost.com/politics/2021/02/09/trump-impeachment-live-updates/
By John Wagner
9 Feb 2021

The nomination of Michael Regan as Biden's administrator of the Environmental Protection Agency advanced Tuesday on a 14-to-6 vote of the Senate Environment and Public Works Committee.

Regan, who has served as the top environmental regulator in North Carolina since 2017, pledged at his confirmation hearing last week that he would "move with a sense of urgency" on climate change and other priorities and work with Democratic and Republican lawmakers alike.

"I believe Michael Regan is someone who can help unite us in common purpose," Sen. Thomas R. Carper (D-Del.), the committee's chairman, said ahead of the vote. "That's what he did in North Carolina."

Several Republicans who voted against the nomination said their decision had nothing to do with Regan himself but a fear that he would carry out an environmental agenda that would hurt their states.

"I think the world of Michael Regan," said Sen. James M. Inhofe (R-Okla.). "The problem I have is the agenda he'll be following."

Senate panel advances EPA nominee; GOP slams Interior pick
https://www.seattletimes.com/nation-world/nation-politics/senate-panel-advances-epa-nominee-gop-slams-interior-pick/
Feb. 9, 2021 at 9:41 am Updated Feb. 9, 2021 at 9:43 am
By MATTHEW DALY
The Associated Press

WASHINGTON (AP) — A Senate committee has endorsed President Joe Biden's nomination of Michael Regan to lead the Environmental Protection Agency, setting up a vote in the full Senate.

The Senate Environment and Public Works Committee advanced Regan's nomination Tuesday on a 14-6 vote.

Regan, who has served as North Carolina's top environmental regulator since 2017, would be the first Black man to run the EPA. Lisa Jackson, EPA administrator in President Barack Obama's first term, was the first African American to lead the agency.

Regan is known in his home state for pursuing cleanups of industrial toxins and helping low-income and minority communities significantly affected by pollution.

Sen. Tom Carper, D-Del., the chairman of the environment panel, called Regan the right person to lead EPA, citing his "experience bringing people together to solve our most pressing environmental issues and make sure no community gets left behind in the process."

Regan is the second Biden environment or energy nominee to win committee approval. Former Michigan Gov. Jennifer Granholm was endorsed as energy secretary last week.

A third Biden nominee, Deb Haaland, has not yet had a hearing on her selection to lead the Interior Department. Two Republican senators, Steve Daines of Montana and John Barrasso of Wyoming, have announced they will oppose her confirmation. Both lawmakers cite concerns over Biden's decision to impose a moratorium on new oil and gas leases on federal lands, and his rejection of the Keystone XL oil pipeline from Canada.

Daines said in a statement he will seek to block Haaland's nomination on the Senate floor. He spoke with Haaland, a New Mexico congresswoman, last week.

"After our conversation, I'm deeply concerned with the congresswoman's support on several radical issues that will hurt Montana, our way of life, our jobs and rural America, including her support for the Green New Deal

and President Biden's oil and gas moratorium, as well as her opposition to the Keystone XL pipeline," Daines said.

He also was concerned by Haaland's responses on issues such as wildlife management and access by hunters and sportsmen to public lands, Daines said. "I'm not convinced the congresswoman can divorce her radical views and represent what's best for Montana and all stakeholders in the West," he said.

Barrasso, the top Republican on the Senate Energy and Natural Resources Committee, said in a statement that Haaland's "radical views are squarely at odds with the responsible management of our nation's energy resources."

Citing her opposition to oil and gas production on federal lands, Barrasso said Haaland "must demonstrate that she will follow the law, protect the multiple uses of our public lands and reject policies that will force energy workers into the unemployment line."

Haaland, who was elected to her second term in November, is a member of the Laguna Pueblo tribe. Her selection has been hailed by Democrats, environmentalists and tribal groups as a historic pick that would make her the first Native American to lead the powerful federal agency that has wielded influence over the nation's tribes for generations.

A spokesman for the Interior Department said the "targeted pause" on new oil and gas leases on federal lands and waters does not affect existing operations or permits for existing leases, "which are continuing to be reviewed and approved." The order does not restrict energy development on private, state or tribal lands.

A hearing on Haaland's nomination is expected later this month.

MATTHEW DALY

Daily on Energy, Presented by AHRI: Biden team stumbling over jobs questions
https://www.washingtonexaminer.com/policy/energy/daily-on-energy-presented-by-ahri-biden-team-stumbling-over-jobs-questions
by Josh Siegel, Energy and Environment Reporter & Abby Smith, Energy and Environment Reporter
February 09, 2021 12:10 PM

HANDLING JOBS QUESTIONS: The Biden administration is struggling to get out of its own way as it tries to make the case that its clean energy and infrastructure spending agenda will create new jobs that can replace lost work in the fossil fuel industry.

A pointed exchange at yesterday's White House press briefing demonstrates how the Biden team has not developed a coherent response to questions, including from union leaders who endorsed him, about how his early move to cancel the Keystone XL pipeline could cost jobs. The Laborers' International Union of North America has said the Keystone decision will cost 1,000 existing union jobs and 10,000 projected temporary construction jobs (it would support much fewer permanent jobs).

"When it is and where it is that they can go for their green job?" Peter Doocy of Fox News asked press secretary Jen Psaki.

Psaki responded sarcastically to a line of questioning that she surely should be anticipating.

"Well, I'd certainly welcome you to present your data of all the thousands and thousands of people who won't be getting a green job," Psaki said. "Maybe next time you're here, you can present that."

She went on to repeat the Biden team mantra that his forthcoming plan to investment in infrastructure will create "good-paying union jobs" and "advance our climate and clean energy goals."

Whether those new jobs are created or not, Psaki and other Biden officials such as John Kerry who have stumbled over similar questions risk undercutting the buy-in for their agenda if they dismiss the challenge of matching lost fossil fuel jobs with new ones created in clean energy.

Note: During the campaign, Joe Biden was careful to avoid being put on the defensive about his climate platform and jobs.

"When I think about climate change, the word I think of is 'jobs,'" he said in introducing his plan in July, a phrase he's used again since becoming president.

The written plans of the campaign also were responsive to the challenge, as are many of the administration's early documents. The on-the-spot rhetoric so far, though, hasn't been as nimble.

Biden's executive order on climate change includes creating an interagency working group to come up with ideas to help communities dependent on fossil fuels. The group, headed by Biden Domestic Climate Coordinator Gina McCarthy and National Economic Council Director Brian Deese, is set to report results in 60 days, so we'll see if their approach in writing is more calibrated than their rhetoric.

JOHN KERRY'S CHINA BET: Kerry faces a daunting task as he seeks to prove the Biden administration can set aside the biggest confrontations with China to cooperate on combating climate change, Josh reports for a story this morning.

China has rejected Kerry's contention that climate action be treated as a "critical standalone issue" that can be "compartmentalized" as the two countries feud over trade, intellectual property theft, market access, and human rights.

Skeptics of Kerry's single-minded approach argue that climate change naturally intersects with other issues, such as trade.

The research group ClearView Energy Partners said in a note yesterday that China could potentially "wield concessions on climate as a source of leverage in other negotiations" an argument recently proffered by none other than former President Donald Trump's national security adviser John Bolton.

The Cold War analogy: Kerry and his allies refer to his goal of treating climate as a standalone issue with China as a Reagan-Reykjavik moment, comparing it to the U.S. and Soviet Union negotiating over nuclear arms. "There's ample precedent for countries cooperating in areas of mutual interest while competing in others," said David Sandalow, a former under secretary of energy in the Obama administration.

Reasons for optimism: Defenders of Kerry's approach say mitigating climate change is an obvious area of national interest in both countries, the world's top two emitters and largest economies.

"The Chinese-U.S. relationship will largely determine the success or failure of climate mitigation globally," Paul Bledsoe, who was a climate change adviser to former President Bill Clinton, told Josh. "Therefore, it has a separate identity apart from purely bilateral grievances."

China is eager to maintain dominance in manufacturing clean energy technologies and deploying renewables and electric vehicles, areas where Biden aims for the U.S. to close the gap.

"The posture is not so much to sit with your arms folded and wait for the other guy to set a good climate target. Are you going to own the next generation of global energy markets, or are you not?" said Paul Bodnar, a managing director at RMI who was senior director for energy and climate change on the Obama administration's National Security Council.

TONKO EYES INFRASTRUCTURE PUSH: Democratic Rep. Paul Tonko, who leads the climate subcommittee of the House Energy and Commerce Committee, said today he is prioritizing working with Biden to pass an infrastructure bill with "green threads of climate response."

Tonko, in a virtual press conference outlining his agenda, said an infrastructure bill could focus on building out electric vehicle charging infrastructure and modernizing the electricity grid.

But the New York Democrat was not ready to weigh in on what climate-specific policies Congress should pursue. Tonko issued a supportive statement last week related to a plan by Democratic Sen. Tina Smith of Minnesota to pursue a clean electricity standard as part of an infrastructure bill through reconciliation. He was less effusive, however, about the idea today.

"If there is need, a demand by the process to have a CES, we would work with the two Houses and both parties to make it in accordance with a full plan that gets us to the 2050 goal [net-zero emissions]," Tonko said. Tonko, however, said Congress must focus on an "economy-wide solution" to climate change, and he noted a clean electricity standard only applies to the power sector.

An economy-wide solution is usually code for carbon pricing, but Tonko suggested that was one of several options.

"We are going to remain open to all the elements," Tonko said, adding that carbon pricing is not the only solution.

REGAN NOMINATION CLEARS SENATE ENVIRONMENT PANEL: Four Republicans joined Democrats on the Senate Environment Committee to approve Michael Regan's nomination to be EPA administrator this morning.

The six other Republicans on the panel, however, voted against Regan's nomination, despite several of them saying he is qualified for the position and the type of individual they'd like to see leading the agency.

"Unfortunately, officials in place at the White House and at the EPA have already set the agenda before he achieves the office," said Sen. Shelley Moore Capito, the top Republican on the committee. "It is unclear whether Secretary Regan, if confirmed, would have any authority or have the authority to stop the regulatory march towards the Green New Deal."

Even the Republicans who voted to approve Regan's nomination are wary of Biden's climate agenda and Regan's role in it. Sen. Kevin Cramer, who voted to advance Regan's nomination, said he will "reserve" his decision on whether to confirm Regan on the Senate floor. "I hope to receive reassurances that collaboration is possible before then," Cramer said in a statement.

WEST VIRGINIA ATTORNEY GENERAL READY TO FIGHT BIDEN ON CLIMATE: Patrick Morrisey, the West Virginia attorney general who vigorously fought Obama-era emissions mandates, is preparing to battle even stricter policies from the Biden team.

"The Biden administration is taking some of the ideas from President Obama and growing them on steroids," Morrisey told Abby in a recent interview. "You see a very aggressive federal government that is focused on a particular ideology."

Morrisey said he and other Republican attorneys general are already exploring options to challenge sweeping climate change executive actions Biden has taken in his first few weeks, including cancellation of the Keystone XL pipeline.

He's also looking at ways to address a federal appeals court ruling one day before Biden's inauguration that struck down the Trump EPA's Clean Power Plan replacement, which set much narrower carbon controls for power plants.

Morrisey told Abby he and his GOP attorney general colleagues are trying to get out ahead of any strict climate mandates the Biden administration issues to reassure companies it isn't a guarantee those mandates will hold up in court.

More from the interview in Abby's story in this week's Washington Examiner magazine.

HOW THE FED IS FOCUSING ON CLIMATE RISK: The Federal Reserve is incorporating climate change risks into its regulatory oversight in two ways: calling on individual financial institutions to monitor climate risks to their own business and assessing climate vulnerabilities to the entire financial system.

That is according to a report yesterday from Glenn Rudebusch, a senior policy adviser and executive vice president in the Economic Research Department of the Federal Reserve Bank of San Francisco.

"The effects of climate change are inescapable and include far-reaching economic and financial consequences for many households and businesses," Rudebusch wrote.

The Fed has increasingly been sounding the alarm on climate change. Late last year, it formally joined a global network of central banks focused on the issue and it included discussion of climate change in its semiannual report on financial stability for the first time.

These moves have drawn criticism from Republican lawmakers, who fear the steps could prompt banks to minimize fossil fuel investments. The Fed, though, has said it is still in the early stages of determining how to assess climate change risks.

INDIA'S FUTURE IS ALSO KEY FOR CLIMATE: India has a "tremendous opportunity" to avoid following the high carbon pathway of its peers as it seeks to fill what's expect to be the largest increase in energy demand of any country over the next 20 years, the International Energy Agency said in a report today.

India is already the world's third largest consuming country, and the third biggest emitter (it is a much smaller emitter on a cumulative basis), with 80% of its demand being met by coal, oil, and solid biomass.

But India will soon become the world's most populated country, and millions of households are set to buy new appliances, air conditioning units, and vehicles. To meet growth in electricity demand over the next two decades, India will need to add a power system the size of the European Union to what it has now, IEA projects.

India is already a leader in solar power, with huge plans to add 450 GW of renewable capacity by 2030, mostly through relying on the sun.

But assuming today's policies don't change, India's emissions will rise 50% by 2040, more than any other country, IEA says.

That's because even with improvements in the power sector, India doesn't have easy answers to reduce emissions in transportation and industrial uses.

"A crucial task ahead is to put the industrial sector on a similarly new path through more widespread electrification, material and energy efficiency, technologies such as CCUS, and a switch to progressively lower-carbon fuels," IEA said, noting the same tools are key for cleaning up transportation.

RELATED...BIDEN AND INDIA SEEK CLIMATE COOPERATION: Biden and India's prime minister Narendra Modi committed the two countries would "renew their partnership on climate change" in a phone call yesterday.

Biden's Secretary of State Antony Blinken said during his confirmation hearing that the U.S. cooperating with India on reducing emissions is a "necessity."

COURT PAUSES LAWSUIT OVER CALIFORNIA VEHICLE AUTHORITY: A federal appeals court agreed yesterday, at the Biden administration's request, to pause litigation over the Trump administration's elimination of California's ability to set its own, stricter greenhouse gas tailpipe limits.

The Biden administration asked the court last week to pause the lawsuit, saying it was closely reviewing the elimination of California's vehicle waiver and suggesting it would likely take a position different from the Trump agencies. Biden, in his day-one climate executive order, directed the EPA and the Transportation Department to review the Trump administration's action and propose any revisions by April.

The court's pause also comes after the remaining automakers that had backed the Trump administration in the lawsuit dropped their support "in a gesture of good faith" to Biden as the companies seek to begin negotiations over fuel economy standards with his team.

WHITE HOUSE CEQ STAFFS UP: Biden announced new staff today to the White House Council on Environmental Quality, tapping personnel to focus on reducing emissions in specific sectors.

Among the hires are Mark Chambers, who was director of New York City's office of sustainability, as senior director for building emissions; Austin Brown, formerly executive director of the UC Davis Policy Institute for Energy, as senior director for transportation emissions; and Sara Gonzalez-Rothi as senior director of water after she was senior counsel on the Senate Commerce, Science and Transportation Committee.

Biden also named Matt Lee-Ashley, who comes from the Center for American Progress, as CEQ's senior director of lands and interim chief of staff.

MOVERS AND SHAKERS: Alexandra Dapolito Dunn, who served as the EPA's chemical safety chief during the Trump administration, has joined the law firm Baker Botts in its environmental, safety, and incident response division, the firm announced yesterday.

Molly Block, who most recently served as deputy associate administrator for policy in the Trump EPA's press office, has joined Sen. Bill Cassidy's office as press secretary.

Ernst, Klobuchar Introduce Bill Supporting Renewable Fuel Infrastructure
https://ngtnews.com/ernst-klobuchar-introduce-bill-supporting-renewable-fuel-infrastructure
By Matthew Mercure
February 9, 2021

Building on her efforts to expand access to higher biofuel blends, Sen. Joni Ernst (R-Iowa) joined Sen. Amy Klobuchar (D-Minn.) in introducing The Renewable Fuel Infrastructure Investment and Market Expansion Act of 2021, a bill that directs the U.S. Department of Agriculture (USDA) to establish a grant program to support the deployment of renewable fuel infrastructure.

The bill would require EPA to finalize their proposed rule that would remove certain barriers to expanded sales of E15, including E15 fuel dispenser labeling and compatibility with underground storage tanks, no later than 90 days after the legislation is enacted.

"Diversifying our fuel supply and introducing higher blends of biofuels in the market are great steps forward as we work to promote clean energy technologies and invest in transportation infrastructure," says Klobuchar. "This legislation will make cleaner fuels more accessible – ultimately benefiting both the economy and the environment."

The act would authorize the USDA Renewable Fuel Infrastructure Grant Program to help accelerate the deployment of renewable fuel infrastructure. Under the program, eligible entities may use the funds to:

-Distribute to private or public entities for costs related to incentivizing deployment of renewable fuel infrastructure
-Convert existing pump infrastructure to deliver ethanol blends greater than 10% and biodiesel blends greater than 20%
-Install fuel pumps and related infrastructure dedicated to the distribution of higher ethanol blends, including E15 and E85, and higher biodiesel blends up to B100 at fueling locations

Following President Biden's executive action to begin transitioning federal government vehicles to electric vehicles, Ernst urged him to change course by instead promoting the adoption of higher biofuel blends and investing in expanding biofuel infrastructure.

EPA Seeks to Test More Atlanta Properties for Lead
https://www.insurancejournal.com/news/southeast/2021/02/09/600655.htm
February 9, 2021

The U.S. Environmental Protection Agency is asking residents in parts of some west Atlanta neighborhoods for permission to test their soil for lead.

The agency has been sampling yards and removing soil in parts of the Vine City and English Avenue neighborhoods west of downtown since 2018 after an Emory University graduate student found dangerously high levels of lead in the area.

Since then, the agency has tested close to 500 yards for lead, but it would like to sample more.

"We've only received access for about 50 percent of the properties in our study area," the EPA's Leigh Lattimore said at a virtual community meeting, according to WABE-FM. "We're really focused on getting the remaining 50 percent and sampling those properties."

Of the properties the EPA has tested, 205 had high enough lead levels to qualify for the agency to pay to remove and replace the soil. That work has been finished on 59 properties; two are getting worked on now. The EPA began excavating yards a year ago.

The coronavirus has made outreach to residents and getting signed permission to sample yards harder, said Abena Moore, community involvement coordinator with the EPA.

"We are restricted from going door-to-door right now," she said. "In addition, a high number of property owners live out of the state or the country. And lastly, there are properties that have been abandoned, and we haven't been able to find the property owner."

EPA on-scene coordinator Chuck Berry said the agency has spent about $8 million of $18 million in authorized funding for the cleanup, but it expects to seek more money.

Lead is especially dangerous for children; it can affect their brains and nervous systems.

The lead in English Avenue and Vine City likely came from waste from Atlanta foundries that was used as fill, the EPA reports.

EPA orders Amazon to halt illegal pesticide sales
https://ktvz.com/news/environment/2021/02/09/epa-orders-amazon-to-halt-illegal-pesticide-sales/
By KTVZ news sources
Published February 9, 2021 11:56 am
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SEATTLE (KTVZ) -- The Seattle office of the U.S. Environmental Protection Agency said Tuesday it has issued a "stop sale" order to Amazon.com to prevent sales on the platform of potentially dangerous or ineffective unregistered pesticides and pesticide devices making illegal and misleading claims, including multiple products that claimed to protect against viruses.

This action adds 70 products to a June 6, 2020 EPA order which contained over 30 illegal products. "Unregistered pesticides in the e-commerce marketplace poses a significant and immediate health risk to consumers, children, pets, and others exposed to the products," says Ed Kowalski, director of the Enforcement Compliance Assurance Division in EPA's Region 10 office in Seattle.

This is the third pesticide stop-sale order issued by the agency to Amazon in the last three years.

Beyond the stop-sales, EPA has mounted other efforts to stop fraudulent products, such as partnering with U.S. Customs and Border Protection to stop multiple imports of millions of illegal disinfectant products imported by or for sale on Amazon.

EPA has also provided guidance to e-commerce companies on multiple occasions about their requirements to ensure their disinfectant products are legal and safe.

The agency advises consumers who have purchased an unregistered pesticide product or a misbranded pesticidal device to safely dispose of it in accordance with local, state, and federal laws.

This is especially important for consumers seeking to protect against SARS-CoV-2, the virus that causes COVID-19. EPA recommends that consumers only purchase products on EPA's "List N of Disinfectants for Coronavirus (COVID-19)." EPA expects all products on this list to kill the coronavirus SARS-CoV-2 (COVID-19) when used according to the label directions.

Under the Federal Insecticide Fungicide and Rodenticide Act, pesticides and disinfectants intended for sale in the U.S. must be evaluated for safety and efficacy by EPA and bear approved labeling with an EPA registration

number (e.g. "EPA Reg. No. 1234-56") and an EPA establishment number (e.g., "EPA Est. No. 12345-AA-1" (domestic) or "EPA Est. No. 12345-AAA-1" (foreign).

In contrast, pesticidal devices must bear an EPA establishment number and conform to certain other requirements, but they are not evaluated for safety and efficacy by EPA before marketing.

Business / Government-politics / News / Oregon-Northwest / Top Stories

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Soot-Stained Flora and Fauna Drive DC Circuit Fight
https://www.courthousenews.com/soot-stained-flora-and-fauna-drive-dc-circuit-fight/
By Samantha Hawkins
February 9, 2021

WASHINGTON (CN) — The Center for Biological Diversity is trumpeting what it calls precedential litigation over pollutant standards that the government sets with no heed to their impact on endangered species.

"It's the first of its kind," Robert Ukeiley, a lawyer for the nonprofit who filed a petition Tuesday that asks the D.C. Circuit to review the Environmental Protection Agency's latest renewal of what are known as National Ambient Air Quality Standards.
"The EPA has been setting these standards for 50 years," said Ukeiley, "but during that whole time, it has refused to consult with experts on wildlife."

Under the Clean Air Act, the EPA is required to review National Ambient Air Quality Standards every five years. This occurred most recently just this past December when the EPA renewed the standards without any changes.

But Ukeiley notes that "the EPA habitually violates the law" in forgoing a requirement in the Endangered Species Act to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service as part of that review.

Measuring less than one-thirtieth the size of a single human hair, soot particles don't normally exist in nature, so animals have not evolved any protective measures against them.

Advocates are concerned that the EPA has not done enough to address the fine particulate pollutant pollutant despite evidence that it harms whooping cranes desert tortoises, among a host of other endangered species.

In small mammals, meanwhile, studies have shown that heart and lung functions show impairment from soot at rates below the current EPA standards.
"Big things like dust get stuck at the top of your lungs," said Nathan Donley, a senior scientist at the Center for Biological Diversity. "But because it's so small, soot makes it deeper into your lungs."

Apart from inhalation risks, soot is known to cause acid rain and excess nitrogen in soil, harming plants and the many herbivores that consume them.

Donley says that for some endangered species, like the whooping crane, harm to even three individuals in their population can be detrimental to the entire species.

"You have to be conservative for estimating the risk for a species on the brink of extinction," Donley said. "Most risk is not acceptable."

The lawsuit claims that the EPA fails to address soot's harm on wildlife. Donley says that an endangered species analysis is a complex, long process, and since no one has challenged the agency so far, the EPA continues to fly under the radar and set air quality standards without the required review.

"We want to make sure these agencies are kept in check," Donley said.

Humans and other non-endangered animals can also be harmed by soot — which is produced by the mining, drilling and burning of coal, oil and methane gas — but pollutant standards for humans and most animals are already set in place by the Clean Air Act.

The Center for Biological Diversity wants these standards made more rigorous as well. As compared with Clean Air Act standards, the Endangered Species Act has a lower threshold for pollutants so as not to jeopardize the existence of species.

Donley says transitioning away from fossil fuels is the best way to end dangerous levels of soot, but it's hard to say what the standard should be without doing the actual analysis.

His group charges the EPA to consult with agencies to do a study and implement recommendations.

With strong science in support of how soot can harm endangered animals, Donley says the lawsuit is a good first case study. Lawsuits regarding other pollutants may follow.

"The science is very clear that soot may cause devastating harm to vulnerable plants and animals," Ukeiley said in a statement. "The EPA ignored the law when it failed to make sure soot in our air and water won't drive endangered species to extinction, and we're going to hold it accountable."

A representative for the EPA declined to comment, citing agency policy on pending litigation.

Message

From: E&E News [ealerts@eenews.net]
Sent: 2/26/2021 6:45:03 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: February 26 -- Greenwire is ready

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GREENWIRE — Fri., February 26, 2021

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This EPA mapping tool could reshape environmental justice

EJSCREEN, a wonky, mostly unknown EPA mapping tool, has drawn the attention of the Biden administration, which has promised to bolster its data in a way that could help environmental lawyers and community activists build stronger cases against oil and gas infrastructure, power plants, and other industrial facilities in minority and low-income neighborhoods.

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5. FEDERAL AGENCIES:

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6. MIGRATORY BIRDS:

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Message

From: POLITICO Pro [alert@email.politicopro.com]
Sent: 2/11/2021 8:39:15 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: DOE tees up $100M for 'transformative' climate tech

DOE tees up $100M for 'transformative' climate tech

By Alex Guillén

02/11/2021 03:38 PM EST

The Energy Department will offer up $100 million in funding for "transformative" clean energy technology research projects, part of the Biden administration's plans to act aggressively on climate change across the government.

Details: The solicitation is the first of what DOE says will be billions of dollars in research funding opportunities to be announced this year and is specifically aimed at technologies to address the climate crisis. DOE's Advanced Research Projects Agency-Energy has issued $2.4 billion in funding over the past decade, garnering plaudits from the private sector and both parties in Congress.

"We are tapping into the imagination, talent, and grit of America's innovators, scientists, and workers to spearhead a national effort that empowers the United States to lead the world in tackling the climate crisis," said national climate adviser Gina McCarthy.

What's next: The Biden administration has also created a working group under the National Climate Task Force — an interagency group that held its first meeting on Thursday — to prepare to launch a new effort to fund decarbonization research known as the Advanced Research Projects Agency-Climate, or ARPA-C.

According to the White House, the working group will focus on developing a suite of decarbonization technologies cutting across industrial sectors. That includes net-zero building technologies and construction materials, tools to manage zero-carbon energy sources, new fuels for airplanes and ships, next-generation coolants, methods to capture greenhouse gas emissions from the production of steel, concrete, chemicals and other products and direct air capture systems.

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Administration:
Cara Korte, CBS News, Democrats turn to the environment as the next front in fighting inequality
Reuters, Thomson Reuters Foundation, Biden restores climate change page to EPA website, reversing Trump
Rachel Frazin, The Hill- EPA reinstates climate webpage taken down under Trump

Agriculture:
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Air:
Dover Post, Carper applauds EPA's final rule cutting cross-state ozone pollution

Water:
Julian Mills, Jackson Free Press, **Jackson Boil Water Lifted But Causes Remain**
The National Law Review, Biden EPA Moving Forward with National Drinking Water Regulations for PFOA and PFOS

Wildlife:
Dover Post- Department of Natural Resources Mosquito Control spraying of woodland pools to begin

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Cara Korte, CBS News, Democrats turn to the environment as the next front in fighting inequality
There's a new arena congressional Democrats see as a way to help both combat the climate crisis and fight racial inequality: environmental justice. And two new bills aim to help combat what advocates say leads to higher household utility bills in poorer communities and neighborhoods with more pollution, among other consequences.
"We have structural injustice when it comes to access to a clean environment," Illinois Senator Tammy Duckworth told CBS News. "Communities of color, poorer communities, are where we've tended to put our most toxic industries and they have borne the brunt of our nation developing."
Urban and rural low-income households spend approximately three times as much on energy utilities as do affluent households. Americans of color, on average, make up 56 percent of neighborhood populations in close proximity to toxic pollutants. And a 2017 EPA report showed that low-income areas are more exposed to climate-related threats such as flooding and drought as a result of outdated infrastructure.
Duckworth plans to re-introduce Thursday the "Environmental Justice For All Act," originally introduced by then-Senator Kamala Harris in August 2020.
In southern Illinois, Duckworth, who co-sponsored the original bill, said she witnessed plumbing disparities where, in older areas, sewage would overflow after heavy rain.
She learned life expectancy in Chicago can oscillate as much as 16 years from affluent to low-income neighborhoods.

"That's not from gun violence, it's purely from access to health care and a clean environment," she said.

It was an ah-ha moment, she said, in her 2016 Senate run. Now, her 130-page bill aims to achieve "health equity, and climate justice for all" through a number of measures including strengthening the Civil Rights Act of 1964 and establishing a working group to ensure nationwide compliance.

The Department of Energy defines environmental justice as "the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." In practice, this means that no community should disproportionately feel the burden of commercial or municipal operations. That could manifest in exposure to pollution, loss of land rights, or lack of access to outdoor space.

Across the Mississippi River from southern Illinois is St. Louis, Congresswoman Cori Bush's district. Growing up in the city, Bush, a registered nurse and activist, said she was unaware of the interconnectedness of her neighborhood, her health, and her environment.

"I used to think that [environmentalism] was about recycling, and it was about polar bears," she told CBS News. "I had no idea that it affected my actual milieu."

In January, Bush, along with Duckworth and Massachusetts Senator Ed Markey, introduced the "Environmental Justice Mapping and Data Collection Act of 2021," which would pay to collect and identify the various data points used to gauge pollution levels in a given community.

Environmental mapping aims to quantify the cumulative impacts of all sources of pollution in a geographic area using factors like water quality, air quality, proximity to green space and utility costs. One such program already exists in California. The CalEnviroScreen was commissioned by the state's Environmental Protection Agency in 2010 to better track environmental injustices and vulnerable communities. Today, the interactive online map lets residents see the score of their own zip code.

California Office of Environmental Health Hazard Assessment's Dr. John Faust led the creation of the tool. Faust told CBS News that the dataset for California alone is so unique and complex that to do the same across the country would take considerable time and resources. However, Faust added that it could create an opportunity to "enhance data."

Bush said a national mapping program would provide "interpersonal community-based" information so people in affected neighborhoods -- as she was in her youth -- could understand the burdens they face.

Duckworth said that the pandemic highlights environmental disparities. Environmental justice advocates suggest that because a person of color is more likely to be exposed to pollutant-caused respiratory illness, those same groups have been disproportionately affected by the virus.

A 2020 National Institutes of Health study found that "Historically redlined census tracts have significantly higher rates of emergency department visits due to asthma, suggesting that this discriminatory practice might be contributing to racial and ethnic asthma health disparities. And a *USA Today* investigation showed people of color make up the majority in 31 of the nation's top 50 counties with the highest COVID-19 death rates.

Duckworth said she believes the legislation has appeal for both urban and rural areas, but no Republicans have signed on to either bill.

First published on March 18, 2021 / 1:37 PM
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Cara Korte
CBS News reporter covering the environment.

Reuters, Thomson Reuters Foundation, Biden restores climate change page to EPA website, reversing Trump

WASHINGTON, March 18 (Reuters) - The U.S. Environmental Protection Agency restored a page containing key climate change information to its public website on Thursday, four years after the Trump administration had removed it as part of a strategy to downplay global warming threats.

The move reflects the massive gulf between Democratic President Joe Biden and Republican ex-President Donald Trump on climate change that is likely to result in sweeping policy changes in the coming years to tamp down on planet-warming emissions from vehicles, power plants, and industry.

"Climate facts are back on EPA's website where they should be," EPA Administrator Michael Regan said in a statement provided to Reuters. "Considering the urgency of this crisis, it's critical that Americans have access to information and resources so that we can all play a role in protecting our environment, our health, and vulnerable communities."

Regan is expected to play a key role in carrying out Biden campaign promises of decarbonizing the U.S. electricity sector by 2035 and steering the economy to net zero emissions across by 2050. He attended his first Biden administration climate change task force meeting on Thursday led by former EPA Administrator and Biden's national climate adviser Gina McCarthy.

In January 2017, the Trump administration had instructed EPA's communications team https://www.reuters.com/article/us-usa-trump-epa-climatechange/trump-administration-tells-epa-to-cut-climate-page-from-website-sources-idUSKBN15906Gto remove the agency website's climate change page, which contains links to climate data, emissions information and global warming programs.

Trump was a vocal climate change skeptic and was seeking to maximize U.S. fossil fuel production. His two EPA administrators - Scott Pruitt and Andrew Wheeler - revoked key climate regulations for power plants, drillers, industrial facilities and vehicles during their tenures.

The Environmental Data & Governance Initiative (EDGI), which tracked federal agency websites' mentions of climate change under Trump, found that the use of the term decreased almost 40%

between 2016 and 2020. (Reporting by Valerie Volcovici; Editing by Richard Valdmanis and Marguerita Choy)

Rachel Frazin, The Hill- EPA reinstates climate webpage taken down under Trump

The Environmental Protection Agency (EPA) has reinstated a climate change webpage that was taken down during the Trump administration.
The agency announced Thursday that it now has a page with information on greenhouse gas emissions data, climate change impacts and scientific reports "for the first time in four years."
In April 2017, the agency scrubbed the page in question as part of an update to "reflect the agency's new direction under President Donald Trump and Administrator Scott Pruitt."
"Climate facts are back on EPA's website where they should be," EPA Administrator Michael Regan said in a statement on the page's renewal.
"Considering the urgency of this crisis, it's critical that Americans have access to information and resources so that we can all play a role in protecting our environment, our health, and vulnerable communities," he said.
Advocates saw the 2017 scrubbing of the page as part of a larger pattern of climate change denial under a president who himself had called climate change a hoax.
"Today, we are relieved to see that the EPA is now actually going to post information about climate change on its website—again," said Dominique Browning, co-founder and director of Moms Clean Air Force, in a statement. "The site was removed by a denier administration, and their denial is endangering all of us. It's time to face reality. Science is back."
When the page was first removed, the former Trump administration said that it was starting by getting rid of "outdated" language.
"As EPA renews its commitment to human health and clean air, land and water, our website needs to reflect the views of the leadership of the agency," J.P. Freire, the agency's then-associate administrator for public affairs, said in a statement at the time. "We want to eliminate confusion by removing outdated language first."

Department of Justice, United States Reaches Proposed Settlement with Ranch Owner to Restore Creek and Wetlands and Pay Damages for Trespass
DENVER – The U.S. Department of Justice, U.S. Environmental Protection Agency (EPA) and Bureau of Land Management (BLM) announced that they have reached a proposed settlement with John Raftopoulos, Diamond Peak Cattle Company LLC and Rancho Greco Limited LLC (collectively, the defendants) to resolve violations of the Clean Water Act (CWA) and the Federal Land Policy and Management Act (FLPMA) involving unauthorized discharges of dredged or fill material into waters of the United States and trespass on federal public lands in northwest Moffat County, Colorado.
On October 22, 2020, the United States filed suit in federal district court alleging that beginning in approximately 2012, and as recently as approximately 2015, the defendants discharged dredged or fill material into Vermillion Creek and its adjacent wetlands in order to route the creek into a new channel, facilitate agricultural activities and construct a bridge. These alleged unauthorized activities occurred on private land owned by the defendants and on public land managed by BLM, constituting a trespass in violation of the FLPMA. Vermillion Creek and its adjacent wetlands are waters of the United States and may not be filled without a CWA Section 404 permit from the U.S. Army Corps of Engineers (Corps), which was not obtained. EPA develops and interprets the policy, guidance and environmental criteria the Corps uses in evaluating permit applications.
"This proposed settlement will result in restoration of important waters in the arid west, deter future similar violations of the Clean Water Act and help ensure accountability and a level playing field," said

Acting Assistant Attorney General Jean E. Williams for the Justice Department's Environment and Natural Resources Division.
"The U.S. Attorney's Office and Department of Justice will take all necessary steps to protect our precious waters, wetlands, and wildlife," said Acting United States Attorney Matt Kirsch for the District of Colorado. "Western rivers are a treasure and require protection from all threats, including damage to their vital creeks, streams, and tributaries."
"Unauthorized dredging and filling of waters of the U.S. will not be tolerated," said Acting Assistant Administrator Larry Starfield for the EPA's Office of Enforcement and Compliance Assurance. "With this action, EPA is ensuring the proper restoration of vital creek and wetland resources."
"This proposed settlement will allow the public lands impacted to begin the process of recovery for the future use and benefit of all the public," said BLM Colorado State Director Jamie Connell.
The United States' lawsuit further contended that the defendants' alleged trespass also included unauthorized irrigation, removal of minerals and destruction of numerous cottonwood trees on federal public land. The fill and related activities on BLM lands were conducted without BLM authorization. The defendants' trespass actions not only interfered with the public's right to current enjoyment of federal public lands, but also jeopardized the future health and maintenance of these lands for use by all.
Under a proposed settlement filed in the U.S. District Court for the District of Colorado to resolve the lawsuit, the defendants agreed to: pay a $265,000 civil penalty for CWA violations; pay $78,194 in damages and up to $20,000 in future oversight costs for trespass on public lands managed by BLM; remove the unauthorized bridge constructed on public lands; restore approximately 1.5 miles of Vermillion Creek to its location prior to defendants' unauthorized construction activities; restore the 8.47 acres of wetlands impacted adjacent to the creek; and plant dozens of cottonwood trees to replace those previously removed from federal lands. Additionally, under the terms of the proposed settlement, the defendants will place a deed restriction on their property to protect the restored creek and wetlands in perpetuity.
This proposed settlement will repair important environmental resources damaged by the defendants. The portions of Vermillion Creek and its adjacent wetlands impacted by the defendants' unauthorized activities provided aquatic and wildlife habitat, runoff conveyance and groundwater recharge. The straightening of Vermillion Creek contributed to erosion of the bed and banks of the stream and detrimental sediment deposition downstream of the channelization. Browns Park National Wildlife Refuge, which provides important habitat for the endangered Colorado pikeminnow, is located at the confluence of Vermillion Creek and the Green River, approximately one mile downstream from the impacted area. Similarly, the destruction of numerous cottonwood trees located adjacent to the creek eliminated nesting, perching, and roosting habitat for raptor species, including bald eagle, golden eagle and red-tailed hawk. Cottonwood galleries with riparian vegetation also provide nesting habitat for a variety of migratory
birds.

Dover Post, Carper applauds EPA's final rule cutting cross-state ozone pollution
Sen. Tom Carper, D-Delaware, chairman of the Senate Environment and Public Works Committee, released a statement March 16 on the Environmental Protection Agency finalizing the revised Cross-State Air Pollution Rule update for the 2008 ozone National Ambient Air Quality Standards.
The revised rule will require power plants in 12 states to reduce emissions of smog-forming nitrogen oxides that contribute to air pollution in downwind states like Delaware.
"This summer, the people of Delaware will breathe a little easier because of this action by EPA," said Carper. "This rule is often referred to as the 'Good Neighbor Rule' and for good reason. Over 90% of Delaware's air pollution comes from sources outside the state. Delaware depends on our upwind neighbors to be good neighbors — to do their fair share when it comes to cleaning up air pollution."
"For years, Delaware, Maryland, New York and other downwind states made it clear to EPA that the Cross-State rule was too weak," continued Carper. "I repeatedly called on upwind states to do more so we could achieve healthier air. In Delaware's case, the First State simply called on upwind states

to flip on control technologies that already existed in power plant facilities. This rule will help meet the concerns raised by downwind states and it couldn't have come soon enough, requiring emission reductions before the ozone season starts."
"I've long tried to live my life by the 'Golden Rule' and treat others the way I would like to be treated," continued Carper. "I believe that many other people do so, as well. The people of Delaware shouldn't have to suffer because other states aren't following the law or because our air quality rules are too weak. This rule is a sign that the new leadership at EPA will once again put people's health over polluters. More can be done to help Delawareans — especially for the 70,000 who live with asthma — breathe cleaner air, but this is a step in the right direction."
Starting this summer, EPA's Revised CSAPR Update will require emissions reductions from Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia. Power plants in these states will be required to optimize existing, already-installed selective catalytic reduction and selective non-catalytic reduction controls beginning in the 2021 ozone season and installation or upgrade of NOx combustion controls beginning in the 2022 ozone season.

Julian Mills, Jackson Free Press, Jackson Boil Water Lifted But Causes Remain
By Julian MillsThursday, March 18, 2021 12:58 p.m. CDT
Jackson officials finally lifted the month-long, city-wide boil-water notice yesterday afternoon, marking an end to the most predominant symptom yet of Jackson's aging and vulnerable infrastructure.
While the City of Jackson cleared 16,000 water wells for use on March 10, officials needed two days of clean water sampling before clearing the city's 43,000 surface connections. The lift allows residents to once again use tap water for cooking and drinking without fear of sewage contamination. Water-main breaks are now back at a "normal cadence," the City of Jackson announced Tuesday.
The repairs bring an end to a month of suffering as Jackson residents went without clean water and, in many cases, little or no running water at all.

Jackson's water crisis garnered national media attention, including on systemic racism that worsened the problems. This week, U.S. Sen. Cindy Hyde-Smith sponsored a federal bill aimed at increasing aid to Mississippi cities in need of infrastructure repairs.

"The weeks of hardship on Jackson residents is upsetting and completely unacceptable," Hyde-Smith said. "Jackson's water woes became a crisis with the February ice storm, but the hard truth is that the crisis was just waiting to happen after decades of neglecting necessary repairs and maintenance. It's time to put that neglect behind us and work toward fixing the problem."

Questions remain whether the bill will actually help repairs get underway. Hyde-Smith's plan calls for multiple sources of aid for the state. Congress would potentially authorize $47 million in infrastructure aid in part by using an already-authorized $25 million via the U.S. Army Corps of Engineers Section 219 Program. The State has not appropriated these funds for use because of an appropriations freeze on Section 219, despite the funds being earmarked since 2007.

In addition, the bill calls for $150 million in aid to the Environmental Protection Agency's Drinking Water State Revolving Loan Fund, but broad language may direct much of that funding toward other states, and an additional $25 million may be used for water decontamination.

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Even if the bill succeeds in securing additional funding, Jackson's infrastructure will require much greater sources of aid if it is to meet the potentially multi-billion dollar estimates Jackson Mayor Chokwe Antar Lumumba has indicated.

The National Law Review, Biden EPA Moving Forward with National Drinking Water Regulations for PFOA and PFOS

Thursday, March 18, 2021

Indicating its intention to move forward aggressively to address growing legacy chemical concerns, the U.S. Environmental Protection Agency in February took two steps towards regulating certain per- and polyfluoroalkyl substances (PFAS) in drinking water.

First, the EPA re-proposed the Fifth Unregulated Contaminant Monitoring Rule (UCMR5) to collect data on 29 PFAS in drinking water. *Second*, the agency reissued the final regulatory determinations for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) under the Safe Drinking Water Act (SDWA), confirming that it will move forward to develop enforceable drinking water standards (Maximum Contaminant Levels (MCLs)) for those two legacy PFAS.

UCMR5

On March 11, 2021, the proposed UCMR5 was published in the Federal Register, 86 Fed. Reg. 13846. The EPA monitors unregulated contaminants under section 1445(a)(2) of the SDWA to determine, among other things, whether the agency should develop enforceable limits for previously unregulated contaminants.

Congress amended the SDWA in 2020 to specifically require that the agency include in UCMR5 certain PFAS with validated methods of measurement. The EPA estimates the total average national cost of implementing the UCMR will be $21 million per year over the five-year period (2022-2026). Whereas UCMR3 collected data for only six types of PFAS, UCMR5 proposes to require public water systems to collect data for 29 different types of PFAS and lithium. The publication of the UCMR5 commences a 60-day public comment period, and numerous comments are anticipated.

Final Regulatory Determination

The EPA's reissuance of the final regulatory determination for PFOA and PFOS – published in the Federal Register on March 3, 2021 – not only signals that the EPA is moving forward with a regulation, but also provides the framework for evaluation of additional PFAS. 86 Fed. Reg. 12272. The EPA received public comments from over 11,000 organizations and individuals after publishing its proposed regulatory determination in 2020.

The EPA relied on data collected under UCMR3, in determining that PFOA and PFOS *may* have adverse health effects and the presence of PFOA and PFOS occurs at levels of public health concern. Toxicology studies remain ongoing.

Potential Significance

Establishing MCLs for PFOA and PFOS may impact site cleanups and remedy selection, in addition to its direct impact on public water systems that will be responsible for meeting the new standards.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) governs remedy selection, which requires consideration of protectiveness and applicable or relevant and appropriate requirements (ARARs). For groundwater, the ARARs are the Maximum Contaminant Level Goals or the Maximum Contaminant Levels. If there is a federal MCL, then the MCL

is the ARAR under CERCLA, and therefore, part of the CERCLA remedy selection. (A state standard may be an ARAR if certain conditions are met.)

Overall, EPA has signaled its intent to develop drinking water standards for the two most common legacy PFAS, both of which are no longer manufactured in the United States. Additionally, monitoring of a larger group of PFAS proposed in UCMR5 – many of which are still in production and use – suggests this is only the beginning of a long story on federal data gathering and research – and, potentially, greater regulation – of PFAS.

In a related regulatory development, also mandated by Congress in 2020, the EPA added 172 PFAS to the list of toxic chemicals that must be reported in the annual Toxics Release Inventory (TRI) under the Emergency Planning, Community Right-to-Know Act (EPCRA). These programs and other agency initiatives will result in a large body of new information about the presence of PFAS in the environment that will inform the Agency's future regulatory decisions.

Meanwhile, the quickly growing patchwork of state regulations for PFOS and PFOA, and certain other PFAS, with different regulatory triggers, creates a significant degree of uncertainty for private parties. The broadest definition of PFAS includes over 4,700 chemicals that have different applications and uses and fall under different subcategories. Not all 4,700 PFAS have the same toxicological profile or chemical properties.

Practically, parties may wish to consider PFOA and PFOS during due diligence activities even in states without regulations depending on the site's prior use, the surrounding area, and the future intended use. Likewise, expressly identifying broader coverage for emerging contaminants – not merely PFOA and PFOS – in environmental indemnifications might be worth considering and carefully crafting. Environmental insurance remains another viable risk mitigation tool.

The petty pace of tomorrow, and tomorrow, and tomorrow

Despite the momentum for quick action on certain types of PFAS, past history with high-profile chemicals may suggest that the public recalibrate its definition of "quick." The protracted battle over setting an MCL for perchlorate, a rocket and missile propellant, may serve as a lesson here. Calls to set an MCL for perchlorate began in earnest in the 1990s.

At the time, analytical methods for detecting perchlorate were limited, proposed remediation technologies were scarce and expensive, and some of the biggest manufacturers and users of the chemical, including the Department of Defense, were unconvinced by studies suggesting adverse health effects from perchlorate at extremely low levels. In other words, the perchlorate debate echoed many of the same dynamics at play with certain types of PFAS.

The perchlorate debate stirred intense political interest and prompted a review of the epidemiology and toxicology by the National Academy of Sciences, which published its analysis in January 2005. The EPA then took 14 years to propose an MCL for perchlorate in 2019, only to withdraw the regulatory determination that prompted the proposal in July 2020.

While there is no way to predict whether or when enforceable, federal regulations of certain PFAS will be put into place, the chemicals are the subject of considerable political, public, and scientific interest and will likely remain so for a long time to come.

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National Law Review, Volume XI, Number 77

Dover Post- Department of Natural Resources Mosquito Control spraying of woodland pools to begin

The Delaware Department of Natural Resources and Environmental Control will begin annual spraying of spring woodland pools to control aquatic immature mosquitoes March 23, weather permitting.

Statewide spraying will originate in southern Sussex County, then expand into Kent and New Castle counties over the next several weeks. DNREC Mosquito Control works throughout the year to limit adverse impacts from mosquitoes, to maintain Delawareans' quality of life by eliminating unbearable

numbers and swarms of biting mosquitoes and to protect public health by reducing possibility of mosquito-borne illnesses.

Up to 10,000 acres of wet woodlands near select populated areas will be treated by Mosquito Control, with a helicopter applying the bacteria-derived insecticide Bti. Like all insecticides used by Mosquito Control within the DNREC Division of Fish and Wildlife, Bti has been determined by the U.S. Environmental Protection Agency to pose no unreasonable risks to human health, wildlife or the environment when applied in accordance with product label instructions as required by federal law.

Controlling larval stage early-season woodland pool mosquitoes limits the emergence of biting adult mosquitoes later in the spring.

The spring woodland mosquito larvae spraying campaign marks the beginning of Delaware's mosquito control season, which in most years continues until late October or early November. Control activities will be expanded starting in mid-April to larval and adult saltmarsh mosquitoes, other freshwater mosquitoes, and urban and suburban container-breeding mosquitoes.

Locations and times for scheduled DNREC Mosquito Control spraying activity can be obtained by calling toll-free 800-338-8181. Mosquito spraying announcements can also be received by email, text or voicemail by subscribing to Mosquito Control's Spray Zone Notification System at de.gov/mosquitospray.

To request local mosquito control service, call the Mosquito Control field office in Glasgow, at 836-2555, for New Castle County and the northern half of Kent County, including Dover; or in Milford, at 422-1512, for the southern half of Kent County south of Dover and all of Sussex County.

For more on mosquito control in Delaware, call 739-9917.

Message

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Politico Pro Q&A: FERC Commissioner Allison Clements

By Eric Wolff

02/25/2021 05:00 AM EST

FERC Commissioner Allison Clements believes the energy regulator should respect states' authority to set policies, but with at least one major caveat: she's wants the Commission to work with NERC to push reliability standards that protect consumers from the type of extreme weather that caused last week's disaster in Texas.

At last week's meeting, Chair Rich Glick assigned Clements the task of standing up a new Office of Public Participation, a requirement set by Congress in the last appropriations. Clements — who worked for the Energy Foundation and ran her own energy consultancy prior to her appointment three months ago — had petitioned for such an office while she worked with the Natural Resources Defense Council's Sustainable FERC Project.

Democrats Glick and Clements — despite being a partisan minority at least until Republican Commissioner Neil Chatterjee's term runs out in June and a Democrat is named to replace him — were part of a 5-0 decision to gather public feedback on FERC's two-decade old gas project certification policy. That could pave the way for Clements to seek to include greenhouse gas emissions into FERC's process, and to consider whether permitting reviews are sufficiently weighing environmental justice concerns.

In a conversation with POLITICO, Clements laid out her goals for the new office, while explaining how FERC can get buy-in from states to allow more transmission to be built — and when the commission should get out of the way of state policy.

This transcript has been edited for length and clarity.

You are tasked with standing up this new Office of Public Participation. Can you lay out your vision for what this office will look like?

I will note that I signed onto a petition in 2016, when I was with the Sustainable FERC Project, in support of asking the Commission to set up this office, so it's something that I've been pushing on for a long time. I'm excited to be taking the helm and helping staff move office development forward. It's been a long time coming.

But what a time it is that we're going to do this! At the end of January, [President Biden issued a climate directive on] on Day One, and then it was ... a day focused on racial equity, and the issues of equity and access are kind of at the center of the conversation. And here we are with an opportunity to develop an office at the commission that helps to provide access to the processes and the arcane language and jurisdictions and practices of the Commission.

While the specifics of how the office will look are still unclear and will be informed by public input, what I imagine will be the outcome will be that it doesn't dictate any certain set of decisions but it certainly ensures that the perspectives provided for those decisions will be more well rounded.

How do underrepresented frontline communities go from being where they are now and not having a framework to having input in decisions? What is the mechanism?

There will be a significant education and outreach component of the work. What the office might be kind of depends on the circumstances of the individual or or group or community who wants to engage. So if it's a pipeline question, and you've got a group of landowners, they might not know what FERC is, or they might.

But having an office where they can say, "OK, we keep hearing about this FERC place that is going to decide whether or not I get to keep my land." They should have a whole bunch of resources there ready to inform them of what that means. What is the certification process? What are the considerations that the Commission puts into the new determinations that determine whether or not the pipeline can get built? What is the NEPA process? Where are my opportunities for input, etc., etc.

When we're talking about market design, that's a little bit of more of an indirect connection. The change of a rule of how a market is run doesn't make or break whether or not a person gets to keep their land. But it has impact on customer bills. So, how do you interest a group, how do you interest consumer advocates who are spread too thin and other kinds of customers who don't have access, to understand how those decisions get made?

We're looking to hold a workshop on April 16, have a day-long consideration of the issues that we think of, what should the scope be. The statute called for intervenor funding — will there be a process to consider that? There's going to be specific perspectives that environmental justice communities want to share, whether or not those communities are urban communities, rural communities, thinking about pipelines or thinking about other issues. All of that will feed into the parameters of that scope that you're asking about. We're also going to have a written comment period, and hopefully a few other ways to get additional public input.

Chair Glick speaks often about not wanting to undermine state policy. What about the Ohio state law that supports coal and nuclear power? Does that also fall under allowing states to make their own decisions?

Yeah, I don't think the commission gets to pick and choose which state policies it respects. I think I'm pretty legally consistent there. There are opportunities to improve markets design to both come into congruence with state policies and to ensure that customers don't get left holding the bag, or get exposed to the type of emergency events that were taking place this week [in Texas].

We talk a lot about mitigation, which is a long-term plan to avoid climate change. But if there's one thing that's really been brought to the fore by the last six months it's been the need for resilience. How can the electric system be better prepared for more extreme weather events?

There's one kind of caveat to the idea of respecting state policies that I just answered. It's not in contradiction to that, but FERC has reliability authority to work with NERC and to direct standards to be developed. So, in that sense, I will push the commission to act, to protect customers via reliability standards.

And so that certainly interacts with state functions, but it's a clearly defined federal authority In terms of what do we do about all this. I think in large part, it's a planning issue. If the commission plans well, and looks forward at the types of protections, the types of services, and the market design that regions need to ensure future reliability in light of changing resource mix, then we're a good amount of the way there. We can't control the increasing amount of climate change-driven extreme weather events and natural disasters, but we can certainly understand that there's a set of inputs where we know. And we can make prudent assumptions about that set of inputs to inform the kind of actions that need to be taken to ensure grid resilience going forward.

Do the markets have the right kind of products to ensure resilience? And how do you as a FERC Commissioner work with markets to ensure that resilience?

I think the market needs flexibility. So we have these markets that have historically planned around a summer peak or a winter peak, and the dynamic of the resource mix is such that we have now lots and lots of power available at traditional summer peaks and not so much available in shoulder hours and in shoulder seasons. So the considerations are changing. None of those things are intractable. It's just an idea of how we design the markets to incent the flexibility we need in light of the reality of a changing resource mix.

So you've just opened up this docket on gas project certification. What is out of date in the current policy that was last updated in 1999?

The context in which the policy was developed is out of date. So there was an industry that was just introducing competition in the '90s, the pipeline industry, and there wasn't hydraulic fracturing, and those two things alone suggest the need for further consideration. There's a whole lot of other things to be considered in terms of what I'm hoping to get from the [Notice of Inquiry]. That's the part I don't want to project.

I want to understand broadly what people are thinking about the process that the Commission uses to consider greenhouse gas emissions impacts. There's controversy around that question. There's court decisions around that question. And there's a lot of Commission orders that are put out where there's been debate around that question and I'd like to understand what stakeholders on all sides of the issue think about that.

I'd like to understand what environmental justice communities think about the way that NEPA analyses are done and if they have been sufficiently including environmental justice-related considerations. I'm interested in the broader question of need and what is a reasonable way to determine whether or not a pipeline is needed, in this day and age, to ensure that it's in the public interest.

On the subject of transmission, I wonder if you started to think about how FERC needs to modify incentives or planning to try and get the kinds of transmission that the country needs, both to deal with issues like Midwestern blackouts and also the long-term problem of connecting Iowa wind to New York City.

You know the "Fiddler on the Roof" song "Tradition." I always turn that into "Transmission" and that's what comes to my head.

When you decide to take an entire transmission system that has been run by individual transmission owner utilities and say, "we're going to open up, we're going to require you to open up your lines to your competitors or to the new class of competitors," that's hard. That's big, right? And so you can't do everything at once and I think Order 1000 was the next step but it hasn't led to the type of change, and the type of improvements in transmission planning that many of us hoped it would. (Editor's note: FERC approved Order 1000 in 2010 to facilitate new transmission to link different regions of the country.)

So what do we do next? It's a hard question. I think you look at the big rushes to build out the transmission system over U.S. history. The last really big one was because there was a lot of coal plant generation coming online and a lot of nuclear plants coming online, and the transmission system could take these massive amounts of power and move it. And that's where we are today. We have a similar new influx of resources that don't have access to the transmission systems, and that are driven by customer desire for lower-cost power, whether those customers [are] big corporate customers or old school industrial customers or you name it.

The policy drivers and these market drivers of customer choice demonstrate a need for transmission, and we have to break through the to-date intractable problems of cost allocation, and, there's a lot that the Commission can do on that front. And there's some things the commission can't do on that front and so inter-regional

transmission development that is required to move the 750 gigawatts of wind, solar, and battery storage that are in that interconnection queues, in regions across the country, that's going to require the buy-in of states, and the buy-in of customers. And I think we're just at the beginning of that process.

How do you get that buy-in?

We're at a new time. We have 10 states that have either clean energy standards or clean energy goals. Those policies cannot be implemented without increased capacity on the transmission system. We have ambitious policies that require massive deployment of renewables. ... In most cases these days, the renewables or the renewables plus storage combinations are the cheapest option. We also have genuine commitments by companies, and now utilities, to get to 100% clean.

What the commission can do is a different question. I think the commission can use its convening power to bring states together and into dialogues around what we should do on the transmission-planning front. I think we need to improve benefit-cost analysis, and thinking about what the real benefits of transmission development are, and then explain those things. And ensuring that states understand what those benefits are for their customers.

The reality is we're going to spend money. The grid is old. It needs to be improved, and the time for the next build out is here. So in my mind as a FERC commissioner, my job is to ensure that we spend that money well so that customers get benefits commensurate to what they're going to pay on their bills for the development of that transmission and doing that requires planning for public policies. It requires ensuring that benefits are understood, and accounted for, for new transmission development. So there's a lot of work to do.

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To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Kids try to salvage sweeping climate lawsuit

Kids try to salvage sweeping climate lawsuit

By Alex Guillén

03/09/2021 03:52 PM EST

The group of children and young adults trying to force the federal government to take action on climate change on Tuesday dropped their bid for a court-ordered remedial plan in an attempt to keep their lawsuit alive.

Background: The 2015 lawsuit brought by a group of children, many of whom have now aged into young adults, seeks to force the executive branch to act quickly to reduce greenhouse gas emissions and combat climate change.

After procedural disputes bounced the case up and down the federal judiciary for several years, the U.S. Court of Appeals for the 9th Circuit ruled "reluctantly" last year that the children lack standing because their claims were not redressable since the courts cannot order the government-wide action they seek. The appeals court last month declined to reconsider that ruling.

Details: The new version of the lawsuit, lodged in the U.S. District Court for the District of Oregon, is aimed at fixing the redressability problem and allowing the suit to go to trial.

Noting that they won most other issues in the case, the children dropped their request for a court-ordered remedial plan for the government to address climate change. Instead, they are asking for a "declaratory judgment" that states that the U.S. energy system violates their constitutional rights to due process and equal protection of the law, as well as the public trust doctrine.

Even without a subsequent order to act, declaratory judgment in the children's favor could help pressure the government into more rapid decarbonization — or as the new version states, "would be substantially likely to stop the United States' hastening of the environmental apocalypse that locks in irreversible injuries."

The children cited a Monday ruling from the Supreme Court in an unrelated case that ruled 8-1 that a request for even "nominal" damages is enough to satisfy redressability even after the violation of a legal right has ended. In this case, the alleged violations caused by climate change and U.S. policy are ongoing, making an even stronger case that the potential for a declaratory judgment is enough of a redress to keep the kids' lawsuit alive, according to the new filing.

What's next: The new filing asks the district court judge to rule on whether the children can file the updated complaint "well in advance" of the July 12 deadline to file an appeal of the 9th Circuit's ruling to the Supreme Court.

If the judge does not allow the amended lawsuit to be filed, the children could still file it as a new action, either in lieu of a Supreme Court appeal of the prior suit or after losing such an appeal.

The high court is seen as an unlikely avenue for saving the lawsuit as is, especially since the bench tilted rightward last year with the addition of Justice Amy Coney Barrett. Amending the lawsuit at the district court level, however, would avoid immediate review by the Supreme Court.

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Sent: 2/4/2021 3:16:11 PM
To: Daguillard, Robert [Daguillard.Robert@epa.gov]; AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: RE: Special Clips - Michael Regan Confirmation Hearing - 2/4/21

Thanks

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From: Daguillard, Robert <Daguillard.Robert@epa.gov>
Sent: Thursday, February 4, 2021 10:11 AM
To: AO OPA OMR CLIPS <AO_OPA_OMR_CLIPS@epa.gov>
Subject: RE: Special Clips - Michael Regan Confirmation Hearing - 2/4/21

And that was *__Wednesday's__* hearing, obviously. Not Thursday's.

Best, R.

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From: Daguillard, Robert
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Subject: FW: Special Clips - Michael Regan Confirmation Hearing - 2/4/21

A selection of clips on Thursdays hearing, courtesy of Region 7. More may follow.

Associated Press - Biden EPA nominee vows 'sense of urgency' on climate change – 2/3/21 - President Joe Biden's nominee to run the EPA says he learned the importance of preserving the outdoors while hunting and fishing with his father and grandfather in rural North Carolina. http://bit.ly/2MWHXNb

PBS - WATCH: Biden EPA nominee vows 'sense of urgency' on climate change – 2/3/21 - Michael Regan told a Senate committee that under Biden the EPA "will stand up for environmental justice and equity" and will collaborate with business and community groups, state and local governments and others "who know their own communities better than the federal government ever could." http://to.pbs.org/2YWTbV3

Washington Post - Biden's EPA nominee vows 'urgency' on climate change – 2/3/21 - Michael Regan, who would be the first Black man to serve as EPA administrator, promises to seek consensus as he pursues an ambitious agenda. http://wapo.st/2YKuFGs

RFD-TV - Sen. Grassley and Ernst weigh in on EPA Administrator nominee – 2/3/21 - According to Sen. Grassley, "By 2022, the statutory requirements of the RFS run out and will be up to EPA to set those, and I urge Regan not to do anything less than what the law requires now and hopefully more requirements for biofuels." Senator Joni Ernst also had the opportunity to discuss Renewable Fuels with the EPA nominee, but was concerned with his answers on small refinery waivers. http://bit.ly/3trWpNu

FarmWeek - EPA Administrator nominee: 'We will restore the role of science and transparency at EPA' – 2/3/21 - Michael Regan, nominee to be administrator of the U.S. Environmental Protection Agency, (EPA) said he aims to approach the role with transparency, science and stakeholder engagement in mind. http://bit.ly/36IFQ6N

Radio Iowa - Senator Ernst questions EPA nominee – 2/4/21 - Iowa Senator Joni Ernst asked nominee Michael Regan about issues surrounding renewable fuels — including the Renewable Fuel Standard. "RFS is definitely a priority for this administration… the reality is that I want to sit down with my staff, sit down with legal counsel. There are a number of things that are caught up in litigation, there are a number things that we more transparency around how we arrived at those decisions," Regan says. http://bit.ly/3jkyJqu

Roll Call - EPA nominee Regan says environmental progress is good for jobs – 2/3/21 - Republican Sen. Shelley Moore Capito said she fears Biden's environmental agenda will represent a third Obama term. President Joe Biden's pick for EPA administrator on Wednesday told skeptical Republican senators that environmental progress can also foster economic growth. http://bit.ly/3aAsRVU

DTN Progressive Farmer - Regan Faces Barrage of Senate Questions | EPA Nominee Intends to Review Implementation of RFS as Head of Agency – 2/3/21 - EPA Administrator nominee Michael Regan said he wants to strike a balance between government regulation on the environment and stakeholder input about life on the ground. http://bit.ly/3oR0NCK

MarketScreener - ACE Statement on EPW Committee Confirmation Hearing with EPA Chief Nominee Regan – 2/3/21 - American Coalition for Ethanol (ACE) CEO Brian Jennings issued a statement following Mr. Regan's confirmation hearing. 'If confirmed as EPA Administrator, Mr. Regan inherits a long list of unfinished business with respect to the Renewable Fuel Standard (RFS). **https://bit.ly/3avPGdr**

Biomass Magazine - Regan promises 'no surprises' in EPA's administration of the RFS – 2/3/21 - Michael Regan, President Biden's nominee to serve as administrator of the U.S. EPA, said the Renewable Fuel Standard will be a priority for the new administration and stressed agriculture will have a seat at the table when it comes to Biden's climate objectives during his Feb. 3 appearance before the Senate Committee on Environment and Public Works. http://bit.ly/3oW4kQx

Bloomberg Law - EPA Nominee Touts Power to Set Auto Rules Aligned With EV Push – 2/3/21 - President Biden's nominee to lead the EPA said the agency can help chart fuel-economy and tailpipe emissions standards that guide an automobile industry already embracing electric vehicles. https://bit.ly/3azU4YY

Bloomberg Law - Biden's EPA Pick Promises Holistic Review of Biofuel Mandate – 2/3/21 - EPA Administrator-designee Michael Regan vowed "a thorough review" of renewable fuel standard decisions, including waivers exempting oil refineries from annual biofuel-blending quotas. https://bit.ly/3tBzyQq

Bloomberg Law – Biden's EPA Pick Promises 'Thorough Review' of Biofuel Waivers – 2/3/21 - President Joe Biden's nominee to lead the EPA is promising a "thorough review" of waivers exempting oil refineries from biofuel-blending requirements, one of the thorniest issues confronting the agency. https://bit.ly/3oR3yE6

Bloomberg Law – EPA Pick Regan Vows Collaboration as GOP Warns of Lost Jobs – 2/3/21 - President Joe Biden's nominee to run the EPA vowed to collaborate with local governments, businesses and working Americans to confront major environmental threats if confirmed by the U.S. Senate. https://bit.ly/39N7VMn

Bloomberg Law – Biden's EPA Pick Sees Limits of Regulations – 2/4/21 - Michael Regan, Joe Biden's pick to run the EPA, sought to reassure skittish Republicans that the president's early executive orders reducing fossil fuel emissions and reviewing Trump-era regulations will not kill jobs or strangle industry. https://bit.ly/2MVehQA

Inside EPA - Regan Vows To 'Assess' Trump EPA Record But Focus On New Actions – 2/3/21 - EPA Administrator nominee Michael Regan is vowing to senators that, if confirmed, he will conduct an "assessment" of the agency's Trump-era actions in line with President Joe Biden's directive to review specific policies for revision but will focus more on collaborative approaches in crafting new high-priority policies. http://bit.ly/2YJr0bP

Inside EPA – Regan Defends Biden GHG Agenda, Hedges On Details of EPA Rules – 2/3/21 - EPA Administrator-designate Michael Regan during his first Senate confirmation hearing broadly defended the Biden administration's emerging climate change agenda as an environmental and economic priority, while keeping his options open on how the agency would help implement that agenda and pledging to work with industry. http://bit.ly/3azULBy

Inside EPA - Regan could boost enforcement as EPA administrator – 2/3/21 - If the Senate confirms Michael Regan to be EPA administrator, the agency's focus on enforcement could increase, according to a new analysis of Regan's leadership of North Carolina's environment department that found a boost in inspections and penalties levied by the state although less of a clear-cut trend in other enforcement actions. http://bit.ly/39LrxjH

Fox News - Biden's EPA pick says U.S. can't 'regulate our way out of every problem' | Michael Regan nominated to steer Biden's climate agenda along with John Kerry, Gina McCarthy - Under questioning from GOP senators, Regan, 45, vowed to "follow the law, not exceed my statutory authority" in enacting a slew of new regulations on everything from powerplants to vehicle tailpipes, mercury emissions to waterways. http://fxn.ws/3pNRdlF

Wall Street Journal - President Biden's EPA Nominee Says He Will Work With Business | Republican senators say Michael Regan gained reputation for fairness as environmental regulator in North Carolina – 2/3/21 - Michael Regan, President Biden's nominee to lead the Environmental Protection Agency, drew bipartisan support at his Senate confirmation hearing Wednesday, including from North Carolina Republicans who said he has a history of working constructively with businesses. http://on.wsj.com/36GVPII

Twitter - @SenJoniErnst – 2/3/21 - At today's @EPWGOP hearing, I pressed President Biden's nominee to lead the @EPA, Michael Regan, on his commitment to defending the #RFS and his view on the new #WOTUS rule. (includes video) https://bit.ly/3cHr3NM

HuffPost - Biden EPA Pick Pledges To Take Swift Action On Climate, Fix Trump-Era Damage – 2/3/21 - Michael Regan, President Joe Biden's pick to lead the Environmental Protection Agency, told lawmakers Wednesday that he would move swiftly to rein in planet-warming greenhouse gas emissions, repair the damage that the Trump administration inflicted at the federal agency and put environmental justice communities at the heart of the agency's efforts. http://bit.ly/39OofMK

Reuters - Biden's EPA Pick to Review Options on Biofuel Waiver Program – 2/3/21 - U.S. President Joe Biden's pick to lead the Environmental Protection Agency said on Wednesday he will consult with general counsel to understand the options available for a program that exempts small refiners from biofuel blending obligations. https://bit.ly/3roCKwW

The Hill - EPA nominee Regan pledges 'urgency' on climate change at confirmation hearing – 2/3/21 - During his confirmation hearing on Wednesday, President Biden's pick to lead the Environmental Protection Agency (EPA), Michael Regan, pledged to act with "a sense of urgency" on climate and to increase the agency's focus on science, transparency and combating inequality. http://bit.ly/3jogg5t

The Independent - Biden's EPA nominee will do 'damage assessment' of Trump era's impacts on science, morale and transparency – 2/3/21 - President Biden's nominee to run the Environmental Protection Agency has said that he will do a "damage assessment" at the agency if confirmed, following four years in which former President Donald Trump sidelined science and rollbacked or weakened dozens of environmental and climate policies. http://bit.ly/3jor3Dt

Daily Caller - Biden EPA Nominee Faces Questions About Agency's Independence During Confirmation Hearing – 2/3/21 - - EPA Administrator nominee Michael Regan faced questions about the agency's independence within the Biden administration during his confirmation hearing Wednesday before the Senate Environment and Public Works Committee. http://bit.ly/3pNU7XB

UPI – EPA nominee Michael Regan pledges to focus on environmental justice - 2/3/21 - Michael Regan, President Joe Biden's selection to head the EPA, pledged Wednesday to place a focus on environmental justice if confirmed.

Message

From: Agri-Pulse Daybreak [sara@agri-pulse.com]
Sent: 2/17/2021 9:59:27 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Agri-Pulse Daybreak Feb. 17: Ex-chairman ready to work on climate legislation * Tai must wait * GM defends its drive to EVs

Agri-Pulse Daybreak Feb. 17: Ex-chairman ready to work on climate legislation * Tai must wait * GM defends its drive to EVs

Your Agri-Pulse Daybreak for February 17, 2021

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Peterson looks to play role in climate role

Former House Ag Committee Chairman Collin Peterson is gearing up to join the upcoming congressional debate about climate and farm policy. Peterson tells *Agri-Pulse* he's talking to several firms

about consulting roles, but he indicated he's not in a rush to sign up.

"I want to stay involved in a positive way in farm policy. I think I have something to offer," he said. "I want to do what I can to help agriculture help rural America, to help farmers. And I'm trying to figure out what would be the best platform to do that."

Why it matters: There are few rural House Democrats with a lot of experience in farm policy. Peterson does, and he has deep connections with farm groups and is a veteran of the 2009 battle over cap and trade. Count on him pushing the Conservation Reserve Program as a key way to reduce carbon emissions.

For more on CRP, including what Peterson thinks should be done about its flagging enrollment, be sure and read this week's Agri-Pulse newsletter.

Tai confirmation as USTR seen before Easter recess

Katherine Tai isn't a controversial choice to be President Biden's U.S. trade representative, but the Senate isn't likely to vote on her nomination until late March, just before lawmakers go on their Easter recess. That's the word from Iowa Sen. Chuck Grassley, a senior member of the Senate Finance Committee, which oversees trade policy.

The committee has a busy schedule that includes first considering Biden's nomination of Xavier Becerra to lead the Department of Health and Human Services, said Grassley. He said that he has already interviewed her and found her "very satisfactory."

By the way: Grassley expects Michael Regan, Biden's pick as EPA administrator, to get his Senate confirmation vote next week or the following week.

Grassley invites climate czar to Midwest

Grassley is inviting Biden's climate czar to see firsthand how ag producers are helping improve the environment and mitigate climate change.

"Instead of pointing the finger, I am hoping we can again work together and learn from each other," Grassley says in a letter inviting Gina McCarthy (above) to his farm. McCarthy, a former EPA administrator who famously clashed with farm groups over the Obama-era "waters of the U.S." rule, is now overseeing climate policy for the White House.

The invite comes after Grassley learned of comments made by McCarthy earlier this month, saying the administration must get the middle of the country "understanding and active on climate."

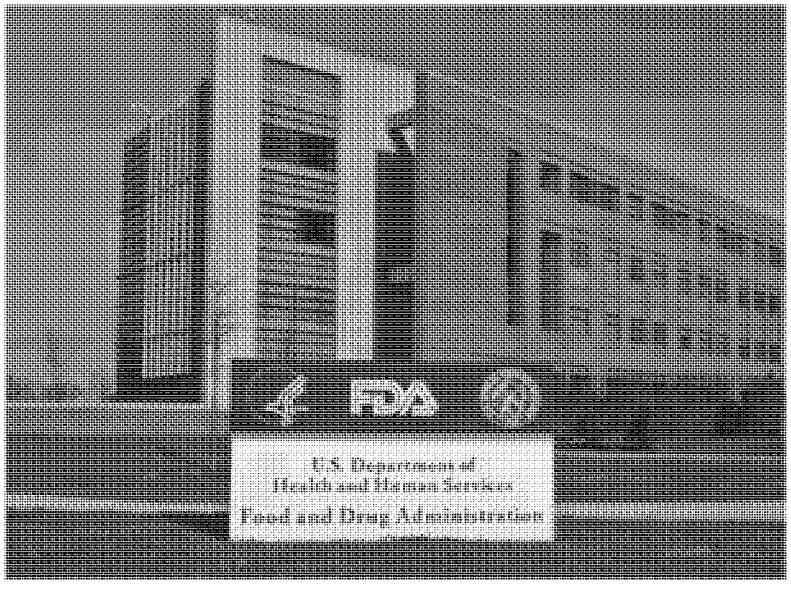
AFBF calculates H-2A wage rates

Based on USDA's new Farm Labor Survey, the minimum H-2A wage rates this year will range from $11.81 in the southeastern states of Alabama, Georgia and South Carolina to $16.34 in Oregon and Washington, according to an analysis by the American Farm Bureau Federation. California's rate will be $16.05, while Florida's will be $12.08.

Read the rest of the analysis here.

By the way: The Equitable Food Initiative has relaunched its Responsible Recruitment Scorecard, an interactive self-assessment tool designed to help growers avoid using forced labor. EDI's leadership includes growers, farmworker advocates and a representative of Costco, which helped found the group.

An anti-trafficking organization, the Polaris Project, claims 41% of human trafficking reports come from "workers with temporary work visas come from H-2A workers in agriculture, and of those, the majority are in the fresh produce industry."



FDA reacts to report of baby food contaminants

FDA is trying to assure the public that it's working on the issue of heavy metals in baby foods after a congressional report found the products contain significant levels of arsenic, lead, cadmium and mercury.

"Our goal is to reduce exposure to toxic elements in foods to the greatest extent feasible and to further advance progress in this area through more research and enhanced collaboration among stakeholders," FDA says. The agency says its efforts on arsenic have resulted in lower levels of that element in infant rice cereal.

The report from the House Oversight and Reform Committee said FDA has failed to regulate lead levels in baby foods, and that its arsenic "action levels" are not strong enough to begin with and cover just a "small sliver" of baby food.

GM defends drive toward EVs

A representative of General Motors defended the automaker's move toward phasing out gasoline and diesel engines when questioned at the National Ethanol Conference on Tuesday.

Tom Van Heeke, policy lead for General Motors, said the company's future "is an all-electric one" and something that has been in the making for years.

"While we think for our business – for light-duty vehicles, ultimately a fully electrified future is the future for us (but) we recognize there are going to be other applications that make the most sense, even within our own broader portfolio," he said.

Van Heeke said the move comes after seeing battery costs decline over the last decade. He said ethanol and synthetic liquid fuels will still have a role in reducing greenhouse gas emissions.

Brazil soy harvest picks up steam

Good weather conditions throughout Brazil are boosting the pace of the country's soybean harvest, although it's still far behind the harvesting rate last year, according to the consulting firm AgRural.

The Brazilian crop – which is still expected to reach more than 131 million metric tons – was 9% harvested as of last Thursday. That's up from 4% from a week prior, but below the five-year average of 20% for this time of year.

"The pace is driven by (the state of) Mato Grosso, where producers accelerated their work last week, supported by drier weather and rushed by the forecast of large volumes of rain for the second half of February," AgRural said.

He said it. "Iowans know a thing or two about resilience." – Sen. Chuck Grassley, R-Iowa, telling reporters his state didn't need to be educated about resilience to climate change.

Bill Tomson, Ben Nuelle and Steve Davies contributed to this report.

Questions? Tips? Contact Philip Brasher at philip@agri-pulse.com

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Subject: Agri-Pulse Daybreak Feb. 25: Lawmakers assured on ag carbon cut * Hemp fix gets state support * Groups buck GOP on minority debt relief

Agri-Pulse Daybreak Feb. 25: Lawmakers assured on ag carbon cut * Hemp fix gets state support * Groups buck GOP on minority debt relief

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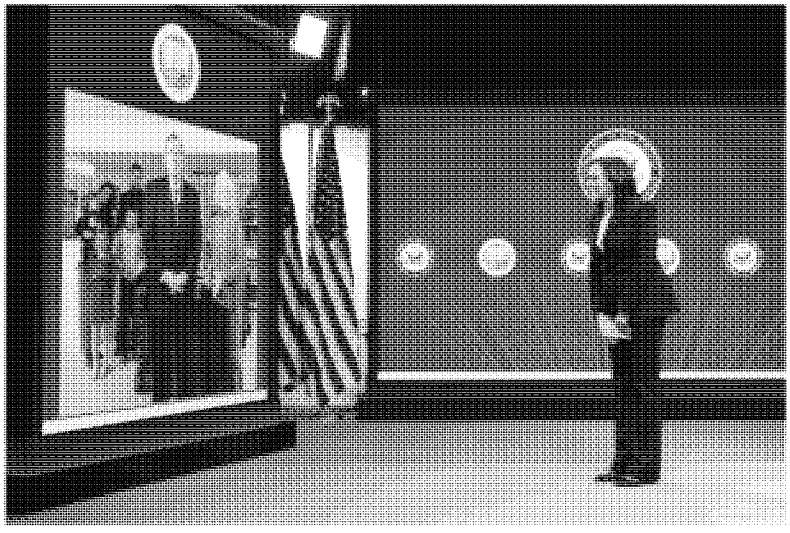
He's back: Vilsack sworn in

Tom Vilsack is officially wearing the title "agriculture secretary" again. He was sworn in Wednesday evening and will be talking to the media today.



The virtual swearing in with VP Kamala Harris. (White House photo)

Read our report, which includes an update on Vilsack's CFAP plans, here.

House Ag starts focus on climate

A top U.S. farm leader is telling lawmakers today that the agricultural greenhouse gas emissions can be cut significantly and some sectors can reach net zero emissions.

In testimony prepared for the House Ag Committee, American Farm Bureau Federation President Zippy Duvall says U.S. farmers have already increased productivity by 287% over the past generations and can do a lot more to reduce emissions with the help of science.

"We can definitely reduce our carbon footprint. With cutting-edge science, we may be able to achieve net zero emissions in some sectors of agriculture," Duvall says. (The dairy industry has already committed to net zero.)

Take note: Duvall is appealing to the committee to make sure foreign sustainability standards don't become barriers to U.S. exports. That's a clear reference to the European Union's Farm to Fork initiative.

Keep in mind: Today's hearing is just the first step in congressional work on ag climate policy this year. A new version of the Growing Climate Solutions Act is expected to be released soon.

FACA leaders stress need for bipartisanship on climate

Leaders of the fast-growing Food and Agriculture Climate Alliance are stressing the need for climate legislation to be bipartisan to ensure long-term success.

"I am seeing a real appetite on Capitol Hill for bipartisan climate legislation," Environmental Defense Fund President Fred Krupp said during the National Association of State Departments of Agriculture winter conference. But Krupp stressed that the bill needs support from both parties to have lasting power.

Chuck Conner, president of the National Council of Farmer Cooperatives, expressed confidence that Congress would pass a climate bill. "My radar is telling me that Congress is going to legislate here. They are going to do something on climate change because it's being demanded, and we're ready to bring this together in a bipartisan way."

NASDA panel endorses higher THC level for hemp

NASDA appears ready today to endorse a higher THC level for hemp to give growers more flexibility.

NASDA's 22-member Plant Agriculture & Pesticide Regulation Committee voted unanimously Wednesday (with two abstentions) to support an amendment to the 2018 farm bill definition of hemp that would raise the allowable THC level from 0.3% to 1%.

That change would result in fewer growers unintentionally producing a "hot" crop that would be considered marijuana under federal law. It would also allow for greater use of available seed varieties, according to the panel.

Take note: Vermont had to destroy about half its crop last year because of the existing limit, and there is broad support in the industry for raising it. Florida Ag Commissioner Nikki Fried called the 0.3% level "arbitrary" and Colorado Deputy Ag Commissioner

Steve Silverman said, “no one’s going to get high from consuming hemp that has as much as 1% THC.”

The full NASDA membership votes on policy amendments today.

Tai: We’ll be tough on China, enforce USMCA

Katharine Tai, President Biden’s pick for U.S. trade representative, is pledging today to hold China accountable for its promises, and she says she’ll ensure that the U.S.-Mexico-Canada agreement is fully implemented.

In the opening statement for her Senate confirmation hearing, Tai says it’s "critically important” to “have a strategic and coherent plan” for confronting China. But she also cautions against alienating the Chinese. “China is simultaneously a rival, a trade partner, and an outsized player whose cooperation we’ll also need to address certain global challenges. We must remember how to walk, chew gum and play chess at the same time.”

As for USMCA, she promises to “make it a priority to implement and enforce” the terms of the new trade pact.

Take note: Chinese Commerce Minister Wang Wentao says his country wants to follow up on the goodwill expressed in a recent discussion between Biden and Chinese President Xi Jinping by creating stronger cooperation in trade and other areas.

"I look forward to joint efforts with our U.S. colleagues to follow the spirit of the phone call between the presidents of the two countries, stepping up communications, enhancing understanding, focusing on cooperation and managing differences

to push bilateral economic and trade relations back on a cooperative track," Wang said Wednesday, as reported by Xinhua, a Chinese state media outlet.

Farm groups endorse debt relief

Several farm groups, including the National Council of Farmer Cooperatives, are signaling support for elements of the $1.9 trillion stimulus package Democrats are pushing through Congress, including the $5 billion in provisions for minority farmers.

The help for minority producers, which includes payments to retire any USDA loans they have, “will better ensure that all producers can come out of the pandemic ready to feed, clothe and fuel their fellow Americans and billions of people across the globe.”

The National Milk Producers Federation and Organic Trade Association also announced support for the aid to minority farmers.

But, but but: A leading critic of the debt relief provision, Rep. Austin Scott, R-Ga., plans to bring attention to it with a pair of amendments he's proposing for floor debate. One would make all women eligible for loan forgiveness. Women farmers are currently classified by USDA as "socially disadvantaged," but the definition used in the bill would limit the loan payoffs to ethnic minorities.

Read our report on the issue here.

Take note: Sen. Chuck Grassley, R-Iowa, says Democrats will strip from the stimulus package a GOP amendment that was adopted in committee to provide special disaster relief to farmers hit by last year's derecho.

Winter storm sinks weekly ethanol production

The ethanol industry saw its lowest weekly output of production last week since May 2020 due to the severe winter weather, and it could be another week before plants get back to normal.

According to Energy Information Administration data, ethanol production dropped 28% to 27.6 million gallons per day for the week ending Feb. 19.

"Electricity outages, major natural gas market disruptions, and transportation issues forced many ethanol producers to reduce output rates by 40% or more. Some were forced to fully idle," Renewable Fuels Association President and CEO Geoff Cooper.

He said it. "The last thing we need is some political football that is passed with just 50 votes." – Fred Krupp, president of the Environmental Defense Fund, on the need for a bipartisan climate bill.

Steve Davies, Bill Tomson and Ben Nuelle contributed to this report.

Questions? Tips? Contact Philip Brasher at philip@agri-pulse.com

Brought to you by: Edge Dairy Farmer Cooperative

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Hydrogen heats up in New York

By Marie J. French

03/17/2021 06:50 PM EDT

New York policymakers are embracing investments in green hydrogen to capture jobs in the growing industry even as advocates assail proposals to burn the fuel for electricity.

State energy authorities have backed two Plug Power plants; Hyzon Motors' new investments to make hydrogen fuel cells for trucks; research on blending hydrogen into the gas pipeline system; and an early-stage startup working to reduce the cost of hydrogen technologies. Taken together, these investments are seen as an indicator of the Cuomo administration's interest in hydrogen as part of the state's future energy mix.

The spending — totaling millions in tax credits, cheap power and grants — comes as environmental advocates express alarm about burning hydrogen and are pressuring policymakers to reject proposals by gas plants to rebuild with the potential to do that. The conflict over green hydrogen — a molecule produced from water and renewable electricity — is emblematic of the uncertainty around New York's energy future and the fight by gas utilities and companies to remain a part of it.

Proponents of going all-in on green hydrogen see it as playing a role in transportation, electric generation, high-heat industrial processes and even building heating, running through pipelines and being burned for energy or used in zero-emissions fuel cells.

"We see our energy system as one that delivers molecules and those molecules will be very different in 2050 than they are today," said National Grid's Sheri Givens. "Globally, green hydrogen is recognized as the molecule that will help with multiple uses."

Green hydrogen can be generated more cheaply from renewable electricity as more renewables come onto the grid. Hydrogen can serve as a long-duration storage fuel for electricity until it is needed. For now, most hydrogen used is produced from fossil fuels.

Environmental advocates are leery of the backing from gas companies for widespread use of green hydrogen. They're concerned it's a ploy to prolong the burning of natural gas for power and heat when New York needs to be rapidly winding down that infrastructure instead.

A new report by NY Renews, an influential coalition of environmental justice and other groups that pushed for the state's sweeping climate law, casts doubt on green hydrogen as a "false solution" pushed by fossil fuel companies.

Supporters of using hydrogen primarily for zero-emissions fuel cells in a range of applications are struggling to draw a distinction.

"Its very important that everybody understands that green hydrogen — i.e. hydrogen that's made from water, take electricity at low temperatures, split water apart and make hydrogen and then take a fuel cell to put that water back together — is environmentally pristine," said Bill Acker, the executive director of NY-BEST, which represents the battery and energy storage industry, at a March meeting of a Climate Action Council advisory panel.

"It's critical that we don't accidentally take green hydrogen off the table or detract from its development because we're concerned about an application, not the main application," Acker said.

The decision on how hydrogen is treated under New York's climate law and whether it gets additional state funding to bring costs down rests in part on decisions being made by the Climate Action Council, which is tasked under the state's climate law with developing a plan to create a "zero emissions" electric grid by 2040 and reduce emissions 85 percent from 1990 levels by 2050.

Some members of the council already have expressed skepticism of green hydrogen combustion. "That seems like an exotic, Rube Goldberg-esque approach," said Environmental Advocates NY's Peter Iwanowicz. The group is part of the NY Renews coalition.

"New York continues to assess green hydrogen and other technologies in their beginning stages, and recommendations on both near-term practical and cost-effective solutions as well as long-term solutions will be considered by the Climate Action Council as it advances its work in developing a Scoping Plan," NYSERDA spokeswoman Kate Muller said when asked about the state's plans for green hydrogen.

Hydrogen innovation economy

While NYSERDA still is developing a hydrogen road map, that has not stopped the state from encouraging investments by companies with a hydrogen focus.

Most prominently, Plug Power has announced plans for two major new facilities in the state. Both a $125 million plant to research and make electrolyzers and proton exchange membranes in Monroe County and a $290 million green hydrogen plant in Genesee County have secured state incentives. The green hydrogen plant will also be getting low-cost renewable power from the New York Power Authority.

Latham-based Plug already provides hydrogen fuel cells to power forklifts for customers including Amazon and Walmart and is targeting additional hard-to-electrify transportation applications.

Plug CEO Andy Marsh is also actively pushing the company into building a broader hydrogen economy — and he's determined to create the first green hydrogen generation network to supply customers with a fuel that complies with their environmental goals.

"You can't reach the carbon goals without a whole mix of technologies and one of them is hydrogen," Marsh said.

Another player is also looking to get in on creating hydrogen from a zero-emissions electric source: Exelon, as part of an effort to secure New York regulatory approvals for spinning off its generation business, is proposing to site a federally supported electrolyzer at its Nine Mile nuclear plant in upstate.

The state is also providing incentives for Hyzon Motors, which makes hydrogen fuel cells for trucks and other heavy-duty vehicles, to renovate a facility in the Rochester area and create 100 jobs.

NYSERDA has also provided grants to Ecolectro, a startup founded by Cornell University graduates that is working on lowering the cost of a key component of hydrogen fuel cells and electrolyzers.

Pipeline research

NYSERDA is backing research at Stony Brook University on blending hydrogen into the pipeline system, in partnership with National Grid.

Transporting green hydrogen is seen by proponents as a major challenge to make it competitive for some applications. Hydrogen can react with some pipeline materials and weaken them.

This challenge presents an opportunity for the existing utilities that own massive pipeline systems and could use their low cost of borrowing to retrofit them to address concerns about safely moving the gas.

"Infrastructure is the biggest barrier for a technology to enter the market," said Devinder Mahajan, the director of Stony Brook's Institute of Gas Innovation and Technology. "You have to move molecules. We already have natural gas pipeline infrastructure, so we can move hydrogen. All you need to figure out over the next 10 years is how are you going to replace natural gas with hydrogen."

Mahajan is overseeing research on how much hydrogen, blended with natural gas, National Grid's existing pipeline system can handle. He said his team has built a simulator and begun testing materials with samples provided by Grid.

By identifying the best materials to use, Grid could make the decision as it replaces older pipe to use pipe capable of carrying 100 percent hydrogen. The institute is also supporting a national research project on hydrogen blending.

A pipeline system for hydrogen would also bring down the costs of Plug's ambitious plans for the fuel.

"Building out pipelines to transport hydrogen long distances will certainly drive down costs," Marsh said. "Using [renewable electricity during] off-peak hours to generate hydrogen to put it in the pipeline with smart management — people around the world are doing it… It's going to happen."

Gas utility backing

NY Renews is particularly concerned about hydrogen being blended into the existing pipeline system. They see it as a way for gas utilities to continue making investments in fossil fuel infrastructure with no guarantee that green hydrogen will come into widespread use.

"Trying to sell policymakers and the public on a 'greener' gas system, in contrast, is economically and environmentally antithetical to a renewable energy future and to the CLCPA's goal of achieving a zero emissions economy," the NY Renews report states, referring to the state's landmark Climate Leadership and Community Protection Act.

But the group is not wholly rejecting the potential role of hydrogen that is truly produced with renewable electricity.

"If produced by carbon-free means and used for limited but essential energy purposes, hydrogen can be valuable in the energy mix of a decarbonizing economy," the report states.

Utilities in New York are keenly interested in green hydrogen. As the state moves forward with policies to achieve an 85 percent emissions reduction from 1990 levels by 2050, with the remainder offset, the use of fossil fuels including gas for heating will have to be phased down — and potentially out.

Electrifying most heating and hot water applications is the focus of policies being contemplated by Climate Action Council advisory panels. The staff arm of the Public Service Commission, which regulates gas utilities, has recommended that investments being made now by gas companies need to be fully paid off ("depreciated") by 2050 to align with the state's plans.

Gas utilities are looking at their options to support the state goals, achieve their own emissions targets — and still remain financially viable for decades to come.

"To put the money in to do the R&D [on green hydrogen], to work with the national laboratories… That's not a cover, that's a real investment of time, money and effort," said Kim Harriman, vice president of state government relations and public affairs for Avangrid, which owns two New York utilities. "It's not just a distraction."

Some utility executives see hydrogen, or renewable natural gas, as an option in cases where electrifying heating in older buildings is challenging. Electrifying everything would require a massive buildout of the grid in a way that may be cost prohibitive, they argue.

In addition to the pipeline research, National Grid has proposed several pilots or demonstrations in its pending rate cases.

One in its upstate gas rate proposal is a partnerships with Standard Hydrogen Corp., a startup out of Cornell based in the Ithaca area. Grid has proposed piloting the startup's multi-use hydrogen energy storage and delivery system in the Albany area.

The project would use renewable electricity to generate hydrogen that could be blended into the gas pipeline system, stored on site, used to fuel hydrogen vehicles or put into a fuel cell to produce electricity for the grid or for on-site electric vehicle chargers.

"We want to show as many functions as the system can do today that can already be monetized today, even if we expect that the system won't do all those functions in future deployments," said Standard Hydrogen's CEO and co-founder Paul Mutolo. "These are all commercialized components. We're integrating them to our own proprietary design."

Revenue from selling the services of the "energy transfer station" is proposed to offset costs to ratepayers and 80 percent of any profit will benefit ratepayers — if Grid gets approval from the Public Service Commission to move forward.

The goal for Standard Hydrogen is to prove out the technology. Then as renewable electricity becomes cheaper and more widely available and demand for green hydrogen grows, they can build out other stations across the state.

Emissions free by 2040

One of the key goals enshrined in the state's new climate law is that the electric generation sector shall be "emissions free" by 2040. This definition, and prohibitions on offsets being used by power plants, has led to some consternation for the power industry.

It's not clearly defined, as the renewable 70 percent by 2030 goal is. Would combusting renewable natural gas that's produced from manure or biomass count as "emissions free" because it's avoiding just releasing methane — a more potent climate-warming pollutant than the carbon dioxide from burning it — into the atmosphere? What about burning green hydrogen which avoids carbon emissions but still releases some nitrous oxides?

Environmental advocates are staunchly opposed to either of those possibilities and have called for the state to more clearly define "emissions free." They're concerned about proposals from NRG and Danskammer to repower with gas in the coming years that have included a pitch they could run on green hydrogen if it is available in 2040.

Existing law does not allow for any emissions of NOx, which are expected if hydrogen is combusted, acknowledged Danskammer's Michelle Hook.

Hydrogen "eliminates methane because you're not using natural gas, it eliminates CO2 and there's a miniscule amount of NOx associated with it. It really is the best option available for backing up the grid at this point," Hook said. "Does it comply? No, because the [law] was written as zero, zero, zero, must be 100 percent perfect."

Both studies for the state and the independent grid operator have identified a need for thousands of megawatts of capacity of dispatchable, emissions free generation in 2040 to back up intermittent renewables and storage with limited durations. Hook said hydrogen could serve that need.

Danskammer's investors have been informed that the repowered plant could be forced to shut down in 2040 if the state doesn't allow it to run on green hydrogen or another zero-carbon fuel. "If for whatever reason they don't do a carve-out for something like hydrogen… we've agreed to shut down," Hook said.

Acker said more consideration of longer-duration storage needs to be included in those analyses and that hydrogen fuel cells could be used instead of combustion. He doesn't believe combustion will be needed to meet the 2040 target.

Hook cast doubt on whether hydrogen fuel cells could provide the same long-duration availability as a turbine combusting the fuel. She said storing hydrogen on-site would take up significant space and the hydrogen may have to be switched from gaseous to liquid form for use in fuel cells.

Mutolo said most fuel cells use hydrogen in gas form and on-site storage for transportation applications can happen in gaseous form. He also said burning hydrogen is less efficient than using it in fuel cells because of the energy lost to heat.

A fuel cell "rips the electrons right out of the hydrogen molecule so it's much more efficient, at least twice as efficient," Mutolo said. He suggested that utilizing the existing combustion turbines to burn hydrogen might make sense but that investments might be better made in hydrogen fuel cells for the future electric supply.

Plug's Marsh said he is in talks with companies to supply green hydrogen for combustion purposes.

"It's going to be a significant improvement versus natural gas," he said. "I do understand people … not wanting to have something running on natural gas without a true commitment to run on hydrogen… It certainly is not the major application by a long shot."

Climate Council panel

Proponents of researching the potential for green hydrogen in the power sector point to multiple studies by consultants for the state and the independent grid operator that see a vast need for thousands of megawatts of generation with the ability to quickly turn on and run for days when renewables aren't available.

"They all identify a large gap to getting to zero carbon in 2040 with the existing technology," Eastern Generation's John Reese said at a Climate Action Council panel meeting. "We need to aggressively pursue these options and a multitude of options… If we don't, then we're going to default into a carbon future."

Eastern Generation owns multiple fossil fuel plants in the state. The power generation panel Reese and Acker both serve on is planning to recommend that more research be done into green hydrogen to examine the safety of storage and pipeline operations. They're also poised to recommend an accounting framework to determine the carbon and other emissions from fuels including green hydrogen and renewable natural gas, acknowledging there may be some role for these resources in the state's energy system in 2040.

Natural Resources Defense Council's Kit Kennedy urged caution.

"We need an iterative process where we're not taking zero carbon solutions off the table but we're also not wedding ourselves to them prematurely," she said during a panel meeting.

A final draft plan is due from the climate council itself by the end of the year and the power generation panel is expected to present its recommendations to the council in April.

To view online:
https://subscriber.politicopro.com/article/2021/03/hydrogen-heats-up-in-new-york-2042224

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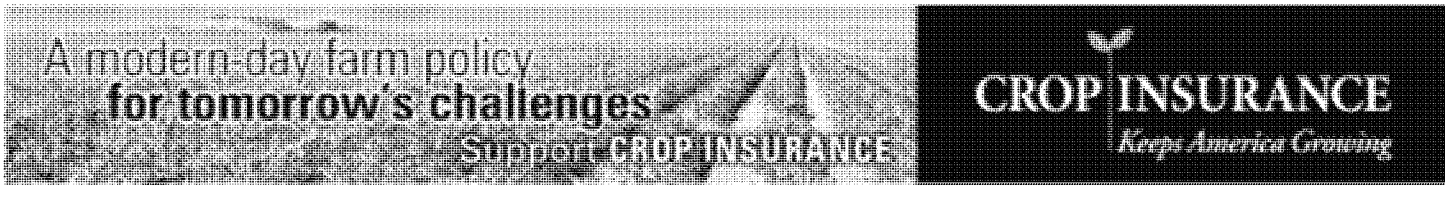


FARM & RURAL POLICY

Agri-Pulse: Daybreak for February 19, 2021

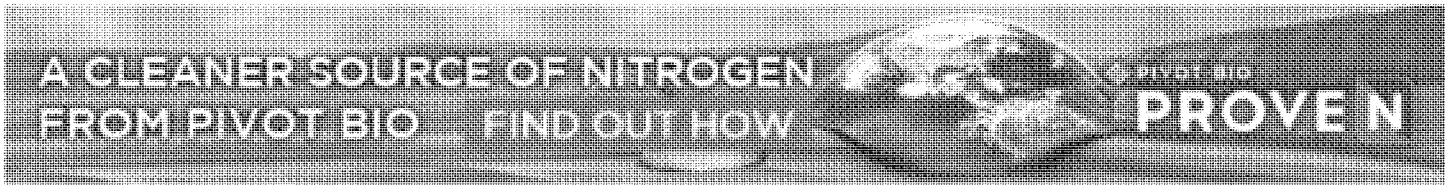
Link - (Audio) USDA outreach coming on climate policy; Immigration bill mixed bag for farms; Study IDs excess nitrogen areas.

Agri-Pulse: DriveTime: February 18, 2021

Link - (Audio) The 97th annual Agricultural Outlook Forum began today, and with it came forecasts for domestic production and international demand. More about that, as well as looks at the cost of climate policy.

Agri-Pulse: Biotech advocate warns of sustainability hurdles
Link - Interest groups have become so hardened in their views about which types of agriculture benefit the environment that the fact that some COVID vaccines have been developed using genetic engineering is unlikely to change minds about the technology's benefits, an industry advocate says.

Des Moines Register: Iowa farm bankruptcies climb to 10-year high, even with $2 billion in government aid, but outlook is improving
Link - The Chapter 12 filings are "just scratching the surface" of farm financial stress, Gainer said.



ENERGY

CBS News: Ignoring pandemic, Americans installed record amounts of solar and wind energy
Link - The U.S. added a record amount of wind and solar energy last year even as the coronavirus was crippling the economy.

Lincoln Journal Star: Public meeting on AltEn Ethanol scheduled in Mead
Link - A burst pipe late last week in a 4 million-gallon digester tank at the AltEn Ethanol plant near Mead sent liquid manure and thin stillage.

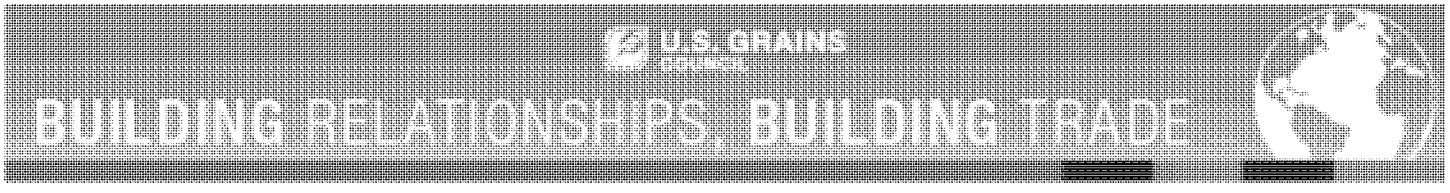
Echo Press: Westrom wants to increase ethanol content in biofuels
Link - This legislation, Westrom said, allows the state to not only continue to be a leader in homegrown fuels, but also creates opportunities for farmers in helping Minnesota and the nation become energy independent.

CNBC: Texas grid failure ignites feud over Republican oversight of the energy industry
Link - The Texas grid failure has ignited a feud between Democrats and the GOP over Republicans'

decades-long oversight of the energy industry.

Jamestown Sun: North Dakota lawmakers debate regulating wind amid national power grid fiasco
Link - At the center of conversation was a bill backed by Republican leadership that was substantially scaled back after opposition from utility companies and the wind industry.

PV-Tech: How Texas solar helped meet winter storm challenges, and could go even further
Link - The generational winter storm which is currently affecting large parts of the US, but perhaps most prominently Texas, has drawn attention to power supply, grid operator ERCOT and the role renewables has, or evidently has not, played in causing widespread blackouts.



FOOD & NUTRITION

Bon Appetit: Want to Buy Produce Direct from Farms? This Site Makes Online Food Shopping a Breeze
Link - Aina connects shoppers with independent growers across the country.

The New York Times: Are Some Foods Addictive?
Link - Food researchers debate whether highly processed foods like potato chips and ice cream are addictive, triggering our brains to overeat.

NPR: Several Days Into The Texas Deep Freeze, Food Is Scarce
Link - The extremely cold weather in Texas hasn't just shut down power and water to millions of people in the state. It's also hammered food supplies.

Eater Portland: Why Did Fred Meyer Throw Out Thousands of Pounds of Food?

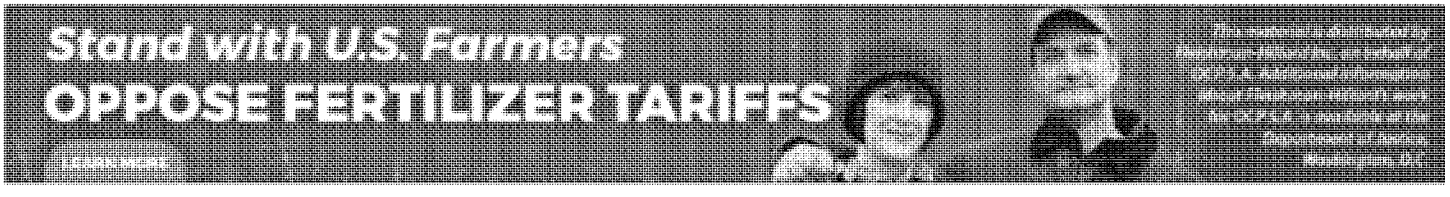
Link - A conflict broke out between grocery store employees and the people who were salvaging food, to the point where a manager called the police

CNBC: Food and its packaging are highly unlikely to transmit Covid, top U.S. food and health officials say
Link - U.S. and international health experts again conclude that there is no evidence of transmission of the coronavirus via food or food packaging.

Fox2Now: Police intervene after dozens swarm grocery store dumpsters to 'rescue' food after Oregon outage
Link - Police had to intervene when dozens of people tried to salvage perishable items tossed in dumpsters following power outages at a grocery store in Northeast Portland, Oregon.

WREG: Memphis residents work to find food after winter storms affect food banks and stores
Link - The Mid-South Food Bank is closed again, and grocery store chains tells us, they're operating under emergency conditions.

FoxNews: More restaurants are opening delivery-only brands as pandemic continues
Link - Due to the coronavirus pandemic, many restaurants across the country have been forced to close their dining rooms and focus on delivery and take-out orders only. This has seemingly created a new trend in the restaurant industry where restaurants no longer have actual restaurants.



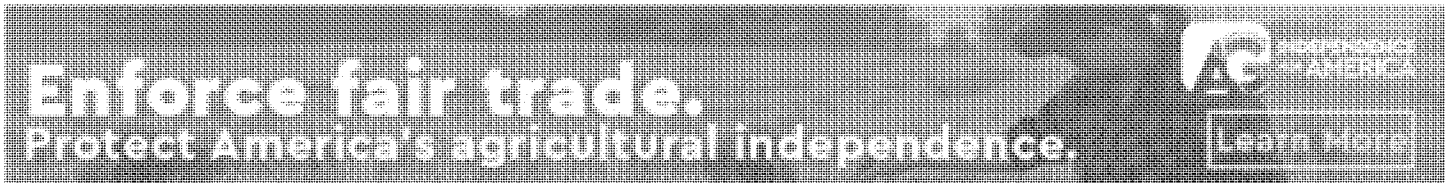
TRADE & INTERNATIONAL

Agri-Pulse: USDA projects record ag exports, increased corn, soybean acreage
Link - The Department of Agriculture expects U.S. farm exports to hit a record $157 billion for fiscal 2021, an increase of $21 billion over the year before, as the global economy recovers and China

increases its already strong demand for U.S. corn, soybeans and meat.

Associated Press: Farmers block trains in northern India to protest new laws
Link - Thousands of protesting farmers blocked trains on Thursday by sitting on railroad tracks in parts of northern India to press their demand for the repeal of new agricultural reform laws that have triggered months of massive protests.

The Press and Journal: Farmer network launched to encourage more planting of trees
Link - The farmer-led Integrating Trees Network, run by the Scottish Government and Scottish Forestry, aims to encourage more producers to plant trees on their land.



LABOR & IMMIGRATION

Agri-Pulse: Immigration bill requires farmworker overtime, offers legal status
Link - Congressional Democrats introduced a broad immigration reform bill on Thursday that would require farms to start paying overtime and would provide an expedited path to citizenship for undocumented farmworkers.

Capital Press: Biden's immigration proposal renews calls for farm labor reforms
Link - A new farm labor bill seeks to improve the H-2A foreign guestworker program.

OregonLive: As harvest season looms, agriculture and farmworker groups in Oregon clash over COVID regulations
Link - As Willamette Valley farmers and agricultural workers prepare for the 2021 season, a regulatory battle is playing out over state rules intended to reduce the risk of COVID spreading in farmworker housing.

KGO-TV: Santa Clara County to expand vaccination eligibility to more essential workers
Link - Santa Clara County health officials announced Wednesday they will begin expanding vaccine eligibility to more essential workers beginning February 28.

NBC 5 Dallas-Fort Worth: Democrats Consider Piecemeal Approach to Immigration Reform
Link - The bill would immediately provide green cards to farm workers, those with temporary protected status and young people who arrived in the U.S. illegally as children.

CONSERVATION & WILDLIFE

The Hill: White House rescinds Trump proposal to limit greenhouse gas consideration in infrastructure decisions
Link - The White House on Thursday rescinded a Trump-era draft guidance that proposed to limit the consideration of greenhouse gas emissions in infrastructure decisions.

CBS News: Black-footed ferret becomes the first endangered animal native to the U.S. to be cloned, marking a "bold step forward" for conservation efforts
Link - This black-footed ferret is a clone of an animal that died more than 30 years ago, and she is the first successful clone of any endangered species native to the U.S.

The Wall Street Journal: Farmers From Kansas to Alabama Have Never Dealt With Weather Like This
Link - Brutal winter weather continued to batter the U.S. agriculture industry, as companies and farmers contended with snow, ice and cold temperatures that disrupted processing, snarled transport and killed livestock across the Midwest and South.

CBS News What the U.S. is committing to as it rejoins the Paris climate accords — and why it

matters

Link - On Friday, the United States will reenter the Paris Agreement, a climate treaty dedicated to lowering greenhouse gas emissions in more than 180 countries around the world.

HuffPost: Monkeys, Lemurs Die In Plunging Temperatures After Texas Sanctuary's Power Fails

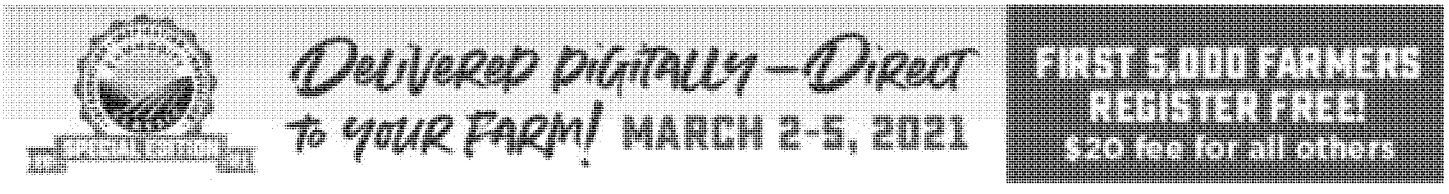
Link - At least a dozen animals, including monkeys, lemurs and a chimpanzee, have died in the freezing temperatures at a Texas animal sanctuary that lost power, officials reported.

MySA: Fish are turning up dead due to freezing Texas temperatures

Link - TPWD urges Texans to report large 'fish kills' during Texas winter storm.

NEWS10 ABC: Colonie's Lansing Farm protected by conservation easement

Link - The 20-acre Lansing Farm in Colonie has been feeding the Capital Region since 1788, and a new conservation easement guarantees that it will continue to do so for generations.



MISCELLANEOUS

Politico: Biden's farm problem: Booming sales raise questions about bailout money

Link - A turnaround in agricultural exports and prices could force adjustments after years of subsidies propped up farmers.

Reuters: Texas ranchers scramble to keep animals alive in unusual cold

Link - Texas ranchers worked overtime to haul water and hay to cattle to keep them alive during a freak winter storm, but some cows have already succumbed to unusual icy temperatures that also killed chickens, idled meat plants and threatened crops.

Associated Press: Malnourished, neglected horses up for adoption after seizure

Link - Eight malnourished and neglected horses seized by the state last year from a Connecticut farm are being made available for adoption, officials said Thursday.

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Subject: Agri-Pulse Daybreak Feb. 19: USDA outreach coming on climate policy * Immigration bill mixed bag for farms * Study IDs excess nitrogen areas

Agri-Pulse Daybreak Feb. 19: USDA outreach coming on climate policy * Immigration bill mixed bag for farms * Study IDs excess nitrogen areas

Your Agri-Pulse Daybreak for February 19, 2021

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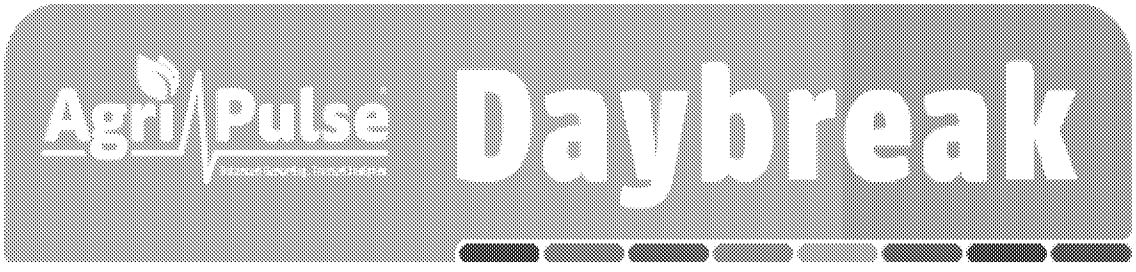

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Best wishes to Bob Dole

Former Sen. Bob Dole, who is 97, starts treatment on Monday for stage four lung cancer.

"While I certainly have some hurdles ahead. I also know that I join millions of Americans who face significant health challenges of their own," Dole said in a statement he posted Thursday.

Bonnie eyes outreach to farmers, foresters on climate

USDA's top climate policy adviser, Robert Bonnie, says the department has a little over 30 days to carry out its outreach to farmers, ranchers and forest managers on climate policy.

An executive order signed by President Joe Biden required USDA to get input from the sector on how agriculture should be involved in addressing climate change, a top priority for the administration. Speaking at USDA's annual Ag Outlook Forum, Bonne also said the department has about 75 days to complete a report on climate-smart agriculture.

USDA also has a role to play in meeting Biden's goal of conserving 30% of U.S. land by 2030. Bonnie says USDA will rely on partnerships and incentives to do that.

By the way: A new study by USDA's Economic Research Service uses survey data to track trends in cover crop adoption. Among the findings: 15.4 million acres of cover crops were planted in 2017, up 50% from 2012. Fields in cotton and corn silage were significantly more likely to have cover crops than fields used for soybeans or corn-for-grain. One-third of the cover crops planted in 2018 received financial incentives from federal, state or other sources.

Immigration bill lacking ag priorities

Biden's immigration bill has finally been introduced in Congress, and it's well short of what will be needed to get support from farm groups. The bill offers an expedited path to citizenship for farmworkers but there's no expansion in the H-2A program, and the legislation would require farms to start paying overtime.

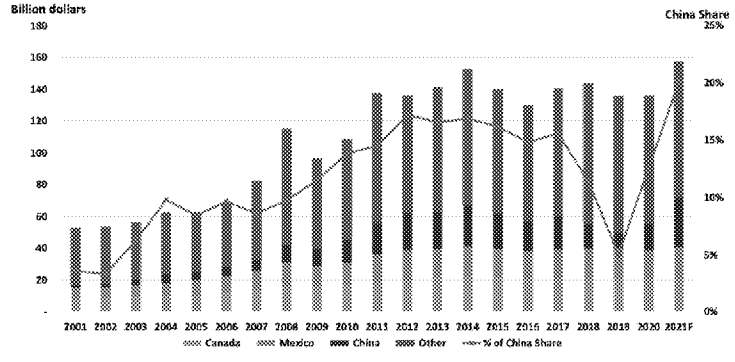
Keep in mind: The bill's sponsors acknowledged it will be tough to pass a broad immigration bill and wouldn't rule out trying to attach pieces of Biden's proposal to a budget reconciliation bill that wouldn't need GOP votes.

Biden said the bill "will bring about much needed change to an immigration system where reform is long overdue."

Read our report on the bill here.

U.S. Ag exports forecast up in FY2021 to a record $157B on strong China demand

Record exports to China forecasted: $31.5B



USDA: China staying in corn market despite high prices

China's voracious appetite for corn imports is the driving factor behind rising prices, and the country will continue its purchasing spree despite how expensive the grain is becoming, says USDA Chief Economist Seth Meyer.

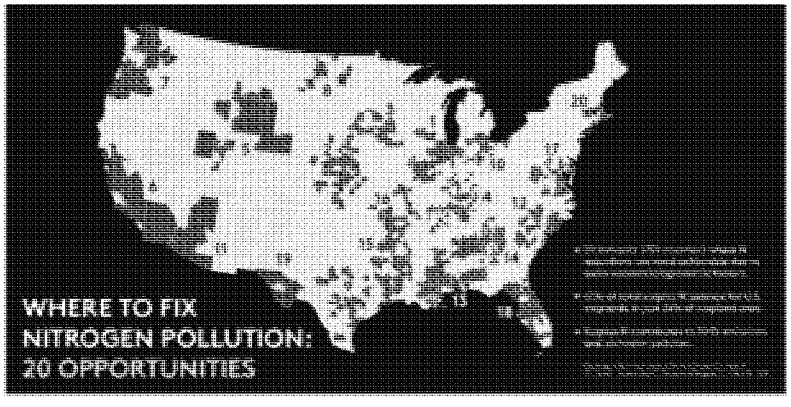
"The Chinese continue to buy," Meyer said during the Ag Outlook Forum. "Certainly, Chinese demand isn't being rationed by those higher prices because they are still lower than prices internal to China."

Chinese demand will help push U.S. corn exports in fiscal year 2021 up to a new record of $14 billion, according to a new USDA forecast. That would be up from just $8.2 billion in FY 2020.

Take note: China is forecast to import a record $31.5 billion worth of all U.S. ag commodities in FY 2021, up from about $17 billion in FY2020. Total U.S. ag exports are projected at a record $157 billion for FY21.

The U.S. livestock industry is feeling "the pinch" of higher grain prices, Meyer said. But he stressed that "so far demand has been pretty robust as well for those meat products."

Read our report on his commodity forecast here.



Study IDs farmland stores of 'surplus nitrogen'

A new study has identified 20 "hotspots of opportunity" (shown above) where farmers and government agencies should focus

their nitrogen reduction efforts. According to the study, farmers in those areas could cut nitrogen usage without hurting crop yields.

The nitrogen surplus areas "represent a whopping 63% of the total surplus nitrogen balance in U.S. croplands, but only 24% of U.S. cropland area," says a news release from the University of Vermont. "In total, they comprise 759 counties across more than 30 states," according to the study published in *Environmental Research Letters*.

Based on total excess nitrogen, the top-ranked hotspot is a 61-county area across Illinois, Indiana, Missouri and Wisconsin. Next is a 55-county region in Kansas and Nebraska, followed by 38 counties in Iowa, Minnesota and South Dakota.

Trump NEPA guidance pulled back

The Biden administration is rescinding draft guidance issued by the Trump administration to implement the National Environmental Policy Act, saying the previous guidance did not give agencies clear direction on how to assess the impact of greenhouse gases on their activities.

The Council on Environmental Quality will take another look at Obama-era guidance issued in 2016 and "is encouraging federal agencies to consider all available tools and resources in assessing greenhouse gas emissions and climate change effects of their proposed actions," including that 2016 guidance.

Interior nominee endorsed by conservation groups

A large and varied collection of conservation groups has endorsed New Mexico Rep. Deb Haaland for Interior secretary, calling her

"a proven leader and the right person to lead the charge against the existential threats of our time — tackling the climate, biodiversity, extinction and COVID-19 crises, and racial justice inequities on our federal public lands and waters."

The groups, ranging from the Natural Resources Defense Council to the Rocky Mountain Farmers Union, made their view known in a letter to Senate leaders, including Senate Energy and Natural Resources Chairman Joe Manchin of West Virginia, who will preside over Haaland's confirmation hearing Tuesday.

RIN prices near historic highs

Prices for renewable identification numbers, compliance credits for the Renewable Fuel Standard, are steadily rising and approaching their highest levels in history, according to a report from the Energy Information Administration.

The corn ethanol (D6) RIN price surpassed $1 per gallon in late January and early February 2021. This is the highest price since 2013, according to EIA.

D4 RINs for biodiesel approached $1.20 a gallon during the same timeframe. EIA says the price increases are due in part to a reduction in small refinery exemptions and uncertainty around future usage mandates.

He said it. "We've got to end these wars. If we can end the wars, honestly, we can end world hunger." – World Food Programme Executive Director David Beasley, a former South Carolina governor.

Steve Davies, Bill Tomson, Ben Nuelle and Spencer Chase contributed to this report.

Questions? Tips? Contact Philip Brasher at philip@agri-pulse.com

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FARM & RURAL POLICY

Agri-Pulse: Daybreak for February 10, 2021

Link - (Audio) House Ag set to move $16B stimulus; Top R: 'End justifies the means' on climate; EPA nominee heads to Senate floor.

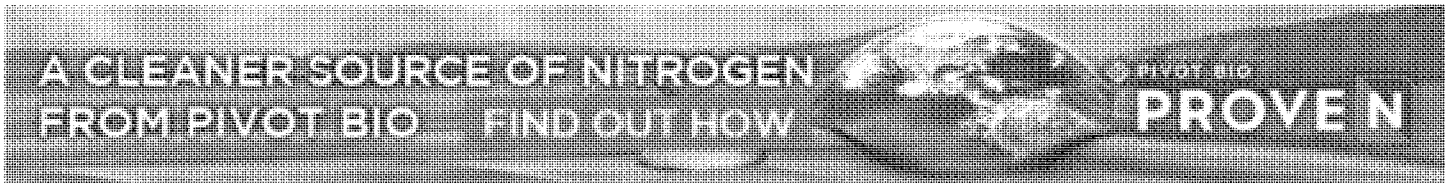
Agri-Pulse: DriveTime: February 9, 2021

Link - (Audio) The Senate Ag Committee chair lays out top ag and nutrition priorities in the coronavirus stimulus and the Senate Environment and Public Works Committee advances EPA nominee Michael Regan.

Agri-Pulse: Stimulus bill offers minority farmer debt relief, aid to food supply chain
Link - Agriculture stimulus provisions released by Democrats on Tuesday would pay off minority farmers' USDA loans and provide $4 billion for purchasing commodities and providing pandemic-related assistance to processors and other parts of the food supply chain.

Agri-Pulse: USDA tightens corn, soybean ending stocks as exports rise
Link - U.S. corn and soybean ending stocks are getting tighter as the Department of Agriculture increased exports in Tuesday's World Agricultural Supply and Demand Estimates report.

Spectrum News 1: Farm Groups Praise Gov.'s Proposed Agriculture Investment
Link - Agriculture is a $104.8 billion industry in Wisconsin and one in nine people in the state have a job related to agriculture.



ENERGY

Norfolk Daily News: Troubled ethanol plant near Mead completes state-ordered shutdown
Link - An ethanol plant near Mead that uses pesticide-treated seed corn complied with an order to shut down its operations, the Nebraska Department of Environment and Energy said Tuesday.

KIWARadio.com: Reynolds moves to establish Iowa biofuels standard and availability
Link - Yesterday, Governor Kim Reynolds introduced a bill into the Iowa Legislature to establish biofuel standards for fuel sold across Iowa and to provide Iowa retailers with increased funding to upgrade infrastructure to offer higher blends of ethanol and biodiesel.

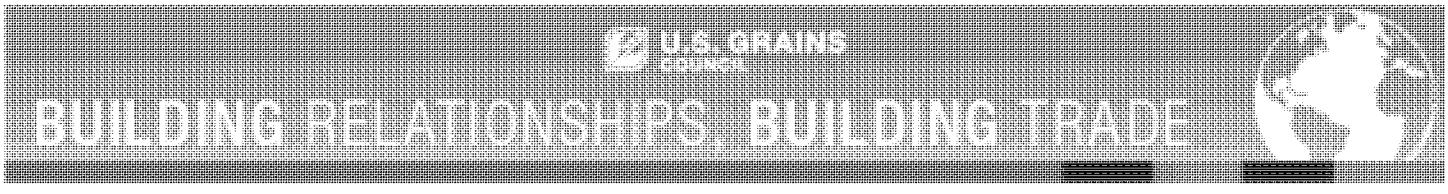
vtdigger.org: Arlington streetlights get local solar power
Link - The Town of Arlington is now offsetting the electric bills for its streetlights with locally generated

solar power.

Mainebiz: Solar energy projects in 3 rural Maine towns get $17M in
Link - Solar projects in rural parts of Maine received new loan guarantees to facilitate their development.

The Desert Sun: Palm Springs residents will now get some of their energy from Palm Springs wind farms
Link - On Tuesday, Desert Community Energy signed three multi-million dollar, 15-year agreements with Terra-Gen, LLC to purchase power from three wind farms.

WWLP.com: State may go bigger in next offshore wind round
Link - The Baker administration and the state's utilities appear ready to put another offshore wind contract out to bid, and this time the plan is to seek as much power as they did in the two previous procurements combined.



FOOD & NUTRITION

Eat This, Not That: McDonald's Is Being Praised By Health Advocates for Making This Change
Link - McDonald's recently announced it would be getting rid of toxic PFAS chemicals from its packaging by 2025, and environmental advocates and health experts are applauding the chain's decision. In fact, they are urging other national fast-food companies to follow the burger giant's example and make the same pledge.

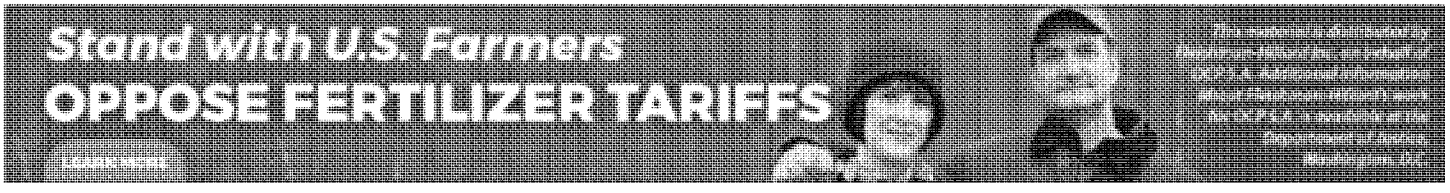
Eating Well: Meet the Company Using Perfectly Imperfect Produce to Tackle Food Waste
Link - Food waste at the farm level is a massive problem in the U.S. One company figured out how to rescue ugly (yet edible!) produce and put dollars in growers' pockets.

ABC News: How this pizza app is helping feed shelters and soup kitchens for National Pizza Day

Link - Local pizzerias are helping fight food insecurity by donating pies to those in need on National Pizza Day.

MarketWatch: High-tech Kroger partner and 'stay-at-home' favorite Ocado says food shopping is changed forever

Link - Shares in Ocado declined in London trading, with analysts pointing to profit-taking as a likely cause.



TRADE & INTERNATIONAL

Fox Business: Trade deals key to lifting demand for agricultural products, farmers say

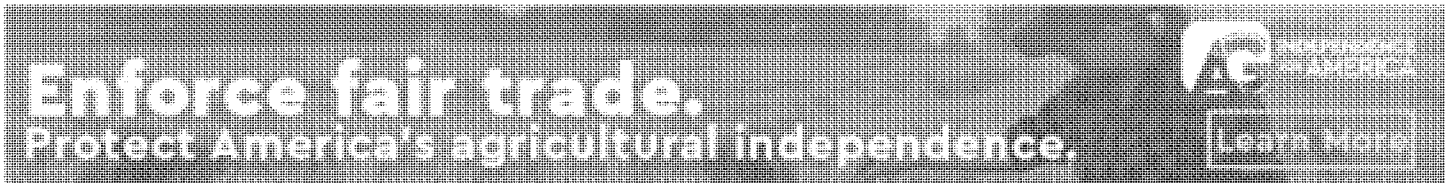
Link - Corn, cattle farmers say that prioritizing trade would help reduce the need for government aid.

Bloomberg: Israeli Farm Cultivates Lab-Grown Ribeye Steak Using 3D Printing

Link - Aleph Farms Ltd. has cultivated a ribeye steak using three-dimensional "bio-printing" and real cow cells.

Global Times: China to double agricultural imports from CEE countries over next 5 years

Link - China needs to deepen agricultural cooperation with Central and Eastern European (CEE) countries in a bid to double CEE countries' agricultural exports to China and raise two-way agricultural trade by 50 percent over the next five years, Chinese President Xi Jinping announced Tuesday in a keynote speech to the China-CEEC Summit.



LABOR & IMMIGRATION

NPR: Coronavirus Testing Remains A Problem For Farmworkers, Meatpackers
Link - Despite being at-risk, essential workers, many who work in farming or meatpacking still lack access to coronavirus testing. Farmworker advocates say that doesn't bode well for vaccination outreach.

The Desert Sun: City of Coachella considers adopting controversial 'hero pay' for essential workers, including farmworkers
Link - Even as several California cities face pushback for requiring businesses to provide so-called "hero pay" to grocery employees and other essential workers, Coachella is considering following suit and even extending the controversial hazard benefits to farmworkers.

Kaiser Health News: Farmworker Camps to Urban Tent Cities: Tailoring Vaccine Info to Where It's Most Needed
Link - The concerns arising in western North Carolina provide a window into the challenges facing health workers across the country.

CONSERVATION & WILDLIFE

Associated Press: Senate panel advances EPA nominee; GOP slams Interior pick
Link - A Senate committee has endorsed President Joe Biden's nomination of Michael Regan to lead

the Environmental Protection Agency, setting up a vote in the full Senate.

Reuters: COVID-19 pandemic creates a headache for U.N. climate summit logistics
Link - UN chief urges countries to prepare for the COP26 conference through online talks, but the preferred plan is still to hold the November summit in person.

The Hill: Manchin urges Biden to reverse on Keystone pipeline
Link - Sen. Joe Manchin (D-W.Va.) is urging President Biden to reverse course on the Keystone XL pipeline, for which the president revoked a key permit on his first day in office.

Forbes: Fossil Fuel Pollution Caused Nearly 1 In 5 Global Deaths In 2018, Groundbreaking Study Suggests
Link - A Harvard University study estimates more than 8 million people died as a result of fossil fuel pollution in 2018—from strokes to cancer—nearly double the number previously thought and accounting for nearly 1 in 5 global deaths that year.

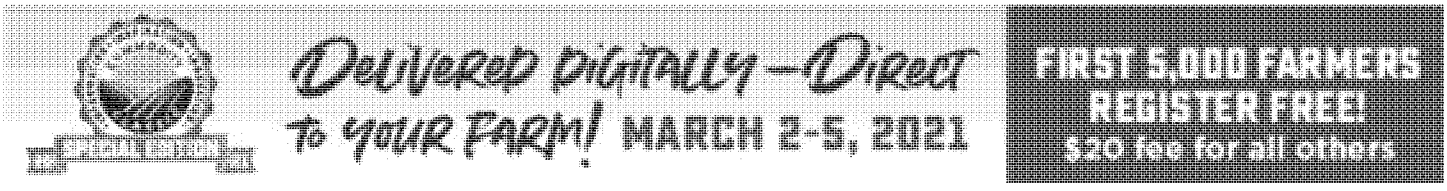
The Guardian: Celebrities call on Biden and Harris to shut down Dakota Access pipeline
Link - Indigenous leaders, environmental groups and stars including Cher and Robert Downey Jr urge White House in letter.

Roll Call: As oceans rise, Democrats put all hands on deck for climate change
Link - As the 117th Congress enters its second month and the Biden administration fills out its Cabinet, Democrats in the executive and legislative branches of the federal government are in agreement that climate change deserves swift attention and in alignment that legislation to support the transition from fossil to clean energy is a good place to begin.

Asheville Citizen-Times: NC Department of Agriculture plans to treat gypsy moth infestations by plane in WNC
Link - The North Carolina Department of Agriculture has an attack plan for an aggressive army of invading marauders.

Des Moines Register: Group takes aim at large livestock operations it says pollutes Iowa's water

Link - Citing what it says is mounting public support, a group of environmental, legislative and farm leaders called Tuesday for a moratorium on new confined animal feeding operations, saying the large-scale livestock-raising facilities pollute Iowa's water and air and harm rural communities.



MISCELLANEOUS

CNN: How drones are making agriculture sustainable
Link - With advances in technology, drones are boosting sustainability in agriculture, prompting farmers around the world to adopt them more readily.

vtdigger.org: 10-year agriculture plan is built on sustainability — for farmers, and the state
Link - Anew strategic plan for promoting Vermont agriculture and local food was issued Monday by the Vermont Agency of Agriculture and Vermont Sustainable Jobs Fund.

The Hutchinson News: Marshall's ag advisers grew up on farms in Kansas
Link - U.S. Sen. Roger Marshall hopes to help farmers and ranchers by serving on the Senate Agriculture Committee. He served on the ag committee while in the House.

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Agri-Pulse Newsletter

Greetings,

Tuesday's hearing to consider Tom Vilsack's nomination to serve, once again, as Secretary of Agriculture, seemed strangely familiar, but also different in many ways. Vilsack was applauded for his depth of experience and perspectives on a wide variety of topics, while being encouraged to bring new ideas forward. Vilsack assured the committee during his online testimony that, "This is a fundamentally different time, and I am a different person, and it's a different department." A few hours after the hearing, the committee unanimously approved his nomination, clearing it for final Senate floor action. In today's newsletter, Philip Brasher has a great overview on what to expect from Vilsack as he heads back to lead the mammoth agency.

China has been on a shopping spree for U.S. farm products recently, but how long will it last? And how will the new Biden Administration grapple with maintaining strong trade relations while confronting the Asian giant on other topics? Bill Tomson has more.

We have lots of new faces in Congress, including the House and Senate Ag Committees. Full rosters have not yet been officially announced, so for now, we asked Ben Nuelle to profile the new GOP members on the House Agriculture Committee. Hannah Pagel also has more on committee assignments and job changes in our Farm Hands on the Potomac section. In addition, Steve Davies takes a look at how one state is trying to change wetlands regulations and Contributing Editor Amy Mayer writes about the CME's new water futures market.

Last but not least, we are hosting a free webinar next week. Many rural counties are still struggling with COVID-19, high unemployment and the environmental impact from natural disasters and wildfires. How will all these competing, and often complex factors be addressed in a new Congress? Those are some of the topics *Agri-Pulse* plans to explore during a webinar discussion "Top rural issues in the New Congress: A discussion with Rep. Dusty Johnson, Rep. Abigail Spanberger and AEM's Kip Eideberg" on Feb. 12 from 11 a.m. to 12 p.m. EST *Agri-Pulse* Managing Editor Spencer Chase will serve as moderator. You can register here.

Best regards,

Sara Wyant

Editor/Publisher

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Vilsack seeks to sell ag on climate policies, offers help on market concentration

Tom Vilsack is trying to reassure farmers and their allies in Congress that the Biden administration's drive to address climate change will provide significant economic benefits without jeopardizing demand for biofuels.

American farmers anxiously wait on Biden's plan for China

China is emptying out U.S. corn and soybean supplies, helping make the 2020-21 marketing year a success for American farmers. That's ramping up the pressure on the Biden administration to work out a sustainable trading connection between the countries even as the political relationship remains fraught.

New House Ag Republican members represent top ag districts

The House Agriculture Committee is getting seven new Republican members, who represent some of the most productive farming regions in the country.

Will CME's water futures market help as a risk management tool?

Water is now being traded on the CME Group's new index, but some California water managers and market observers are less confident the futures contract will offer much benefit.

Indiana moves toward ending protection for isolated wetlands

Indiana is moving to eliminate state protection of isolated wetlands, with the support of building associations and the Indiana Farm Bureau but against vocal opposition from the environmental community.

Demand for plant-based protein alternatives surges amid labeling battles

Environmentally conscious consumers are showing increased interest in plant-based alternatives to meat and dairy products, creating new demand for some crops.

Farmer sentiment slips slightly in January

A monthly survey of the state of mind for producers shows respondents have fairly consistent views about their current status but have growing concern about what lies ahead.

Study suggests fine-tuning Food Box focus

A new study on USDA's Farmers to Families Food Box Program suggests the initiative could be tweaked to better aim its benefits to small- and mid-sized farmers as well as minority- and women-owned operations.

New study: Crop insurance not a barrier to conservation, but other challenges remain

Crop insurance requirements are not barriers to adoption of conservation practices like planting cover crops and reducing tillage, according to a new study.

Impossible Foods ingredient targeted in 9th Circuit

An ingredient Impossible Foods says makes its plant-based burgers "meaty" should have undergone more testing by the Food and Drug Administration, the Center for Food Safety contends in a brief filed in federal appeals court in California.

Farm Hands on the Potomac: Changes ahead for Senate Ag, EPW

The Senate Ag Committee gains new members, USDA continues to bring new staff on board and there are several new faces at the Senate Environment and Public Works Committee.

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Your Agri-Pulse Daybreak for February 10, 2021

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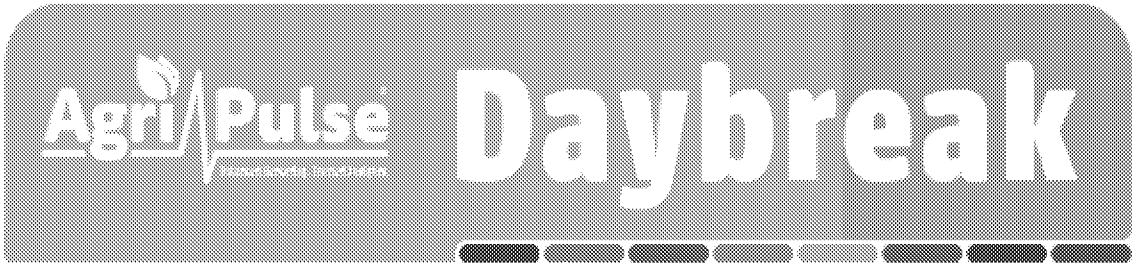

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Republicans slam stimulus process

The House Agriculture Committee will debate a $16 billion stimulus measure that includes a substantial down payment on Democrats' promise to address racial justice issues. The committee's draft bill, which will be part of a broader $1.9 trillion

stimulus package, would provide sweeping debt relief to minority farmers on USDA loans.

The measure also provides significant new funding to help processors and other parts of the food supply chain address the impact of the pandemic.

Keep in mind: The Biden administration as well as Senate Ag Chairwoman Debbie Stabenow were involved in crafting the provisions. “I partnered with my House colleagues to ensure the bill includes vital support to help families put food on the table, strengthen the food supply chain for farmers, provide critical support for farmers of color and fund rural hospitals," said Stabenow.

Republicans on the House and Senate Ag Committees are angry they weren’t included in the drafting of the stimulus package. Ahead of the House bill’s release, Senate Ag ranking member John Boozman told a crop insurance group: “No Republican has any idea regarding what’s in it in the way of agriculture.”

For more on the stimulus package, as well as the latest on the pace of China biotech approvals and a look at how the 2020 Census will affect rural political power, be sure and read this week’s Agri-Pulse newsletter.

Boozman rips administration on ag climate policy

Boozman, R-Ark., also had some harsh words for the Biden administration over their aggressive plans to attack the climate issue.

He doubled down on his assertion that USDA lacks the authority to use the Commodity Credit Corp. as a carbon bank and challenged the department to produce a legal analysis: “I’d like to see some lawyer from the USDA actually put their name to some of the stuff they’re talking about.”

He went on: “In the case of climate (policy), the end justifies the means,” Boozman said. “It appears they’re willing to do whatever they need to do to cram it down our throats the way they did the waters of the U.S.,” Boozman said. He was referring to the Obama-era water pollution rule that was eventually replaced by the Trump administration.

Take note: He also raised doubts about the administration’s interest in expanding farm bill conservation programs as part of its

climate strategy. Boozman thinks it will be even harder to get farmers to enroll in conservation programs with commodity prices relatively high: "What are they going to do to force people" to sign up for conservation programs?

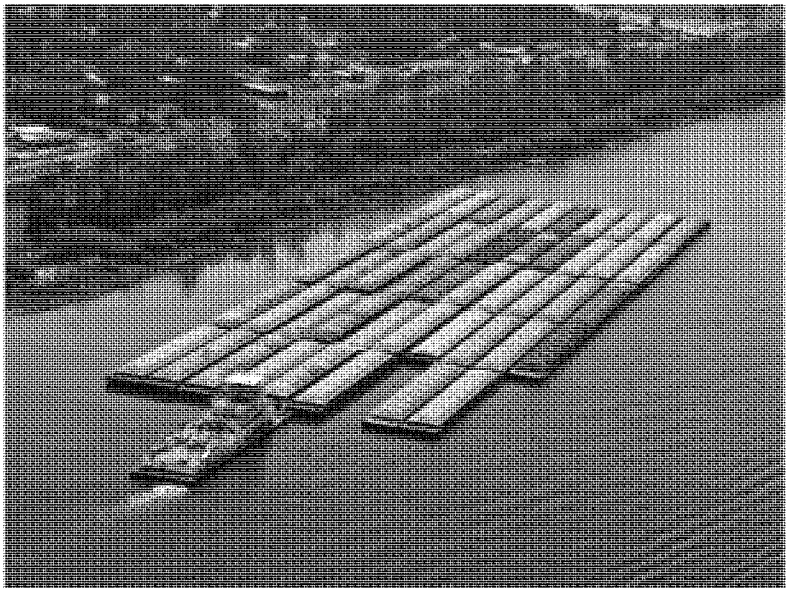
Keep in mind, Boozman is clearly talking about set-asides like the Conservation Reserve Program.

Regan nomination ready for Senate vote

Democrats and Republicans on the Senate Environment and Public Works Committee joined together Tuesday in a 14-6 vote to send Michael Regan's nomination as EPA administrator to the floor.

Four Republicans – Alaska's Dan Sullivan, South Carolina's Lindsey Graham, North Dakota's Kevin Cramer and Mississippi's Roger Wicker – joined the committee Democrats in voting to advance Regan's nomination.

Take note: The committee's top Republican, Shelley Moore Capito of West Virginia, voted against Reagan, citing his lack of commitment to preserving the Trump administration's Navigable Waters Protection Rule, which replaced Obama's WOTUS rule. She's also concerned about the installation of former EPA Administrator Gina McCarthy as the new administration's "climate czar."



Senate plans action by spring on infrastructure

EPW Chairman Tom Carper, D-Del., is pledging to complete two major infrastructure bills by Memorial Day.

"We expect to have a hearing later this month that focuses on surface transportation reauthorization with a strong climate title," Carper told reporters. Carper said the committee will also complete a Water Resources Development reauthorization bill by the end of May.

Union pushes for hazard pay, vaccine prioritization

A union representing grocery store and packing plant workers is calling on the federal government to ensure they get hazard pay during the COVID-19 crisis. Many employers offered hazard pay at the start of the pandemic, but in many cases that has lapsed, according to the United Food and Commercial Workers.

Sue Wilmot, a Safeway worker in the Seattle area, told reporters that the local city council required employers to pay an additional $4 per hour, and she said that needs to expand nationwide.

Marc Perrone, UFCW's international president, said some grocers were "not only refusing to provide hazard pay, they've actively threatened local mayors over adopting hazard pay within their communities."

Weather helps some Brazilian farmers with soy harvest

Good weather in Brazil's midwestern region helped many farmers pick up the harvesting pace of the country's soybean harvest, but rains are delaying progress in the southern states of Paraná and Santa Catarina, according to the AgRural consulting firm.

The 2021 Brazilian soybean harvest is still the latest in 10 years. The harvest is roughly 4% complete, up from 2% a week ago, but still down sharply from 16% at this time a year ago.

Keep in mind: The late Brazilian harvest isn't stopping importers from making purchase commitments. Brazil is still expected to produce 133 million metric tons this year, according to the USDA's Foreign Agricultural Service.

But Brazil is starting with low stocks and the country is expected to sell out quickly.

"This opens the door for a repeat of last year's market conditions where limited availability of Brazilian soybeans late in 2021 reduces export competition for U.S. new-crop soybeans," FAS says in a new report.

Ag exports to Cuba dropped sharply in 2020

U.S. ag exports to Cuba dropped off in 2020, according to USDA data. The U.S. shipped just $157,485,000 worth of ag commodities to the island nation last year, a 37% drop from 2019.

Even U.S. poultry exports to Cuba – which have been rising for years – fell sharply last year. The U.S. shipped just $143.6 million worth of poultry to Cuba in 2020, a 25% drop from the previous year.

U.S. farm groups and some lawmakers are pushing for the Biden administration to improve trading relations with Cuba after years of new restrictions imposed by the Trump administration.
Four Democratic senators introduced legislation this week to end the U.S. embargo on Cuba.

She said it: "Getting hazard pay is not a bonus, it's about being paid for the serious risks we have to face every day." - Sue Wilmot, the Safeway worker in the Seattle area.

Steve Davies, Ben Nuelle, Spencer Chase and Bill Tomson contributed to this report.

Questions? Tips? Contact Philip Brasher at philip@agri-pulse.com

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A modern-day farm policy
for tomorrow's challenges
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FARM & RURAL POLICY

Agri-Pulse: Daybreak for February 12, 2021

Link - (Audio) Can Senate Ag get together on climate? * Taxpayers saving from market boom * 'Miracle honey'.

Agri-Pulse: DriveTime: February 11, 2021

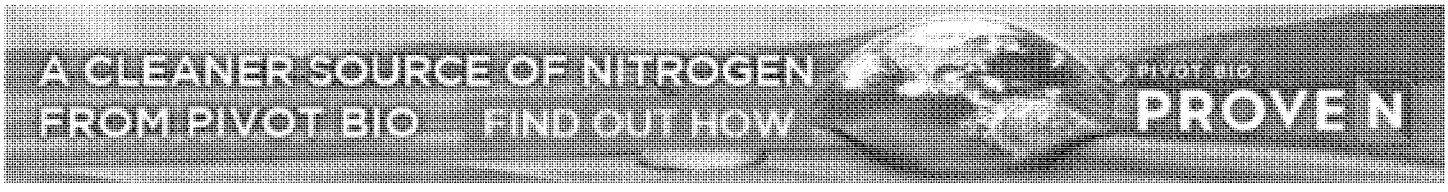
Link - (Audio) A look at the upcoming process on a $1.9 trillion coronavirus relief measure as well as the end of a long-running investigation on imports of something on the plates of consumers across the country.

Agri-Pulse: Washington Week in Review: Feb. 11, 2021: Rep. Chellie Pingree on COVID-19 aid, climate, and organic

Link - House Ag Committee member Chellie Pingree took part this week in the panel's markup of a $16 billion measure to offer aid to the ag industry, which also includes some historic provisions for minority farmers. In this video, the Maine Democrat discusses that bill, the broader $1.9 trillion coronavirus relief effort, and a handful of other issues critical to ag and food policy.

ABC27: Secretary of Agriculture: Third round of PA Farm Bill could strengthen resiliency of agriculture

Link - Agriculture Secretary Russell Redding commended Governor Tom Wolf on Thursday for proposing to fund the 2021-22 Pennsylvania Farm Bill and continue to strengthen the resiliency of the farming industry which so many rely on.



ENERGY

ABC27: 80-acre solar farm in Franklin County lowering PA's carbon footprint

Link - The project, Elk Hill Solar 2, is helping advance energy and sustainability throughout the Commonwealth.

wcia: From the Farm: Biodiesel fuel

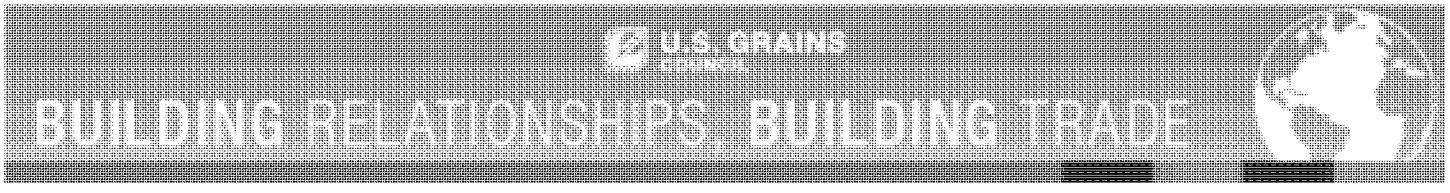
Link - To reduce the use of petroleum-based diesel fuel, many fleet operators with diesel engines are incorporating blends of biodiesel, made from soybean oil.

USA Today: Wind energy had a 'banner year' in 2020. Here's what that means for Joe Biden's climate plan.

Link - The wind energy sector in the U.S. blew away records in 2020.

KIOW: Ernst Urges Biden Administration to Recognize Environmental Benefits of Biofuel
Link - After a new report found that greenhouse gas emissions from corn ethanol are 46% lower than gasoline, U.S. Senator Joni Ernst (R-Iowa) – a member of the Senate Environment and Public Works (EPW) Committee – is pushing the Biden Administration to acknowledge the environmental benefits of biofuel and to use the data as part of their policymaking.

WGLT News: Environmental Groups, Ameren Illinois Spar Over Solar Power Rebates
Link - Ameren Illinois and environmental groups are fighting over what is fair pay for solar power generators.



FOOD & NUTRITION

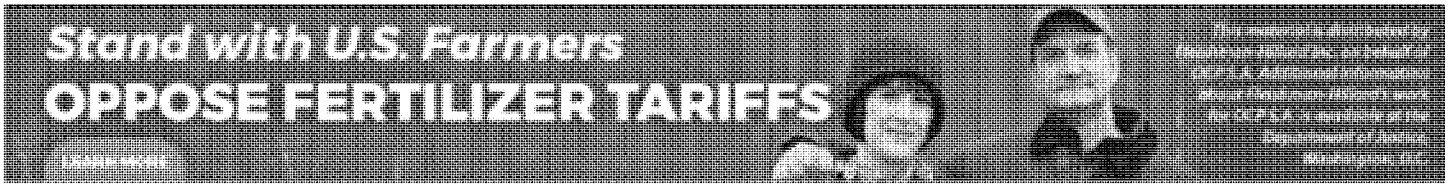
The Wall Street Journal: Kraft Heinz Signals Covid-19 Feast Will Go On
Link - Food companies gave reasons for optimism about packaged-food demand continuing to be strong.

Dayton Daily News: Coronavirus: Salad bars, buffets, self-service food stations can reopen
Link - Ohioans will be allowed to serve themselves starting Friday at salad bars, buffet tables and drink stations.

WWLP: State awards over $13 million to support food security
Link - More than 170 farms, fishermen, and food producers impacted by COVID-19 will be receiving a total of $13 million in grant money.

Supermarket News: Food Lion launches SNAP EBT payment for Instacart orders

Link - Food Lion has partnered with Instacart to enable Supplemental Nutrition Assistance Program (SNAP) participants to directly pay for online grocery orders.



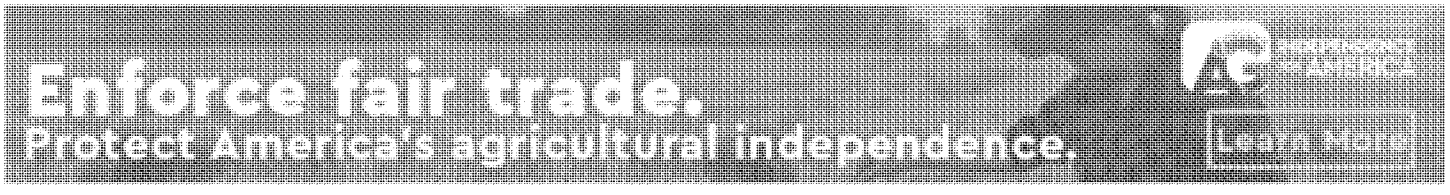
TRADE & INTERNATIONAL

Agri-Pulse: ITC votes to end investigation into blueberry imports
Link - The International Trade Commission decided Thursday to end its investigation into claims that a flood of imported blueberries is hurting U.S. farmers by undercutting prices and stealing business away from domestic producers.

The Press and Journal: 'Transparency key to Trade and Agriculture Commission success'
Link - Transparency will be key to the success of the much fought-for Trade and Agriculture Commission once it becomes a statutory body.

Reuters: Digging for victory: Algeria turns to bananas in trade gap battle
Link - Faced with dwindling energy revenues and costlier imports, Algeria's government is turning to farmers like Mostefa Mazouzi to help narrow its trade gap - so it's lent him a hectare of land on condition he use it to grow bananas.

The Guardian: Undercover footage at French pig farm shows 'abusive' conditions
Link - The farm is a supplier for the Herta brand of frankfurter, part-owned by Nestlé, which is sold by most major UK supermarkets.



LABOR & IMMIGRATION

NBC News: 'A death sentence': Activists call on Florida governor to prioritize vaccines for farmworkers
Link - "Farmworkers are uniquely vulnerable to infection," says an advocate, as the state has the country's third-highest number of Covid cases in the last seven days.

Los Angeles Times: Coachella institutes 'hero pay' for farmworkers: 'Part of the cultural ethos'
Link - The city of Coachella late Wednesday passed a mandate for hazard pay for some retail and food workers, including those at grocery stores, restaurants and farms. The city's mayor said the ordinance is the first in the nation to offer a pandemic pay bump to farmworkers.

KDRV: Oregon officials lift quarantine on mink farm after COVID-19 outbreak
Link - An Oregon mink farm that was placed on quarantine due to a coronavirus outbreak is now out of lockdown, the Oregon Department of Agriculture said on Thursday.

Crain's Cleveland Business: Analysis: Biden eyes more foreign workers while skirting H-1B visa fight
Link - President Joe Biden's immigration overhaul seeks to allow more skilled foreign workers into the U.S. without stirring widespread protest from labor groups, whose opposition would all but ruin prospects for what is already one of the president's most precarious priorities.

CONSERVATION & WILDLIFE

Reuters: White House launches clean energy effort, $100 million in technology funding
Link - The Biden administration on Thursday announced the U.S. Department of Energy will offer

$100 million in funding to support low-carbon energy technologies and create a working group to aid their development and sale.

The Hill: Biden's climate task force has first meeting
Link - The White House's new National Climate Task Force held its first meeting Thursday, seeking a return to "credibility" on climate change.

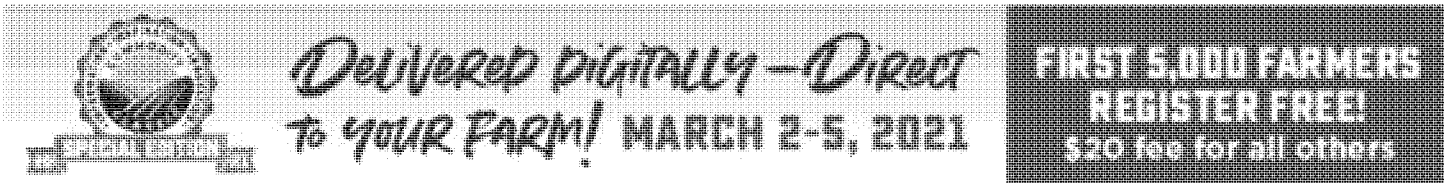
The Hill: EPA sued by environmental groups over Trump-era smog rule
Link - A coalition of 14 environmental groups on Thursday sued the Environmental Protection Agency (EPA) to challenge the Trump administration's decision to not pursue tougher smog standards.

Reuters: U.S. energy regulator to create environmental justice position: chairman
Link - The chairman of the U.S. Federal Energy Regulatory Commission said on Thursday the panel will create a senior position on environmental justice, to make sure new energy projects, such as pipelines and liquefied natural gas facilities, do not unfairly harm minority communities.

Associated Press: U.S. agency cancels Trump policy on conservation purchases
Link - U.S. Interior Department officials on Thursday canceled a Trump administration directive that gave local and state officials power to block purchases of land and water for conservation.

FoxNews: Climate refugees? Biden executive order wants study on resettling those 'displaced' by climate change
Link - President Biden's recent executive order on refugees includes a direction for a study on the impacts of climate change on migration, as well as options for the "protection and resettlement of individuals" displaced by environmental change.

Associated Press: Judge: Trump's lifting of mining ban in US West was wrong
Link - A federal judge on Thursday overturned a Trump administration action that allowed mining and other development on 10 million acres (4 million hectares) in parts of six western states that are considered important for the survival of a struggling bird species.



MISCELLANEOUS

InHabitat: From raising cows to growing veggies: ranchers go vegan
Link - Richard and Cindy Traylor are part of a growing number of ranchers who have made the surprising switch to plant-based agriculture.

Forbes: Preparing For The Unpredictable In Food And Agriculture
Link - The past 18 months have demonstrated just how delicate the food supply chain is, whether at the hand of climate change, political disruption or even a global pandemic.

Capital Press: Latino couple goes from farmworkers to farm owners
Link - After working as farm employees in the U.S. for 25 years, they set out to start their own business — Eloisa Organic Farm LLC in Albany.

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FARM & RURAL POLICY

Agri-Pulse: Daybreak for February 3, 2021

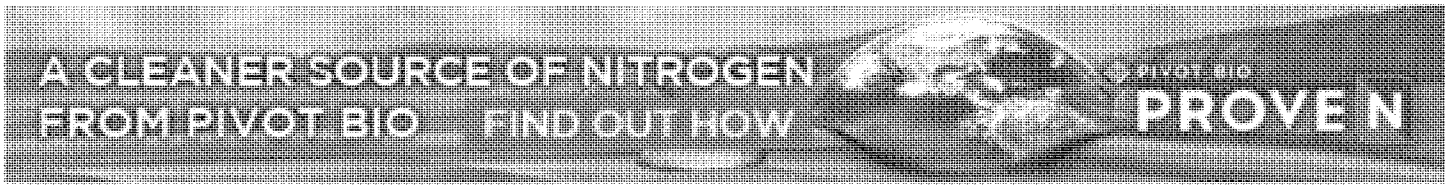
Link - (Audio) Industry critic gets Senate Ag seat; Vilsack advances; Survey shows active interest in carbon payments.

Agri-Pulse: DriveTime: February 2, 2021

Link - (Audio) Secretary of Agriculture nominee Tom Vilsack advances through the Senate Ag Committee and farmer sentiment toward the ag economy drops.

Washington Post: USDA Secretary of Agriculture nominee Tom Vilsack clears first hurdle, says he will focus on climate change

Link - In a unanimous vote, the Senate Agriculture Committee on Tuesday afternoon advanced Tom Vilsack's nomination as agriculture secretary, setting him up for a swift confirmation by the U.S. Senate.



ENERGY

WBUR: Mass. Solar Farm Ordered To Pay $1M For Polluting Wetlands, River

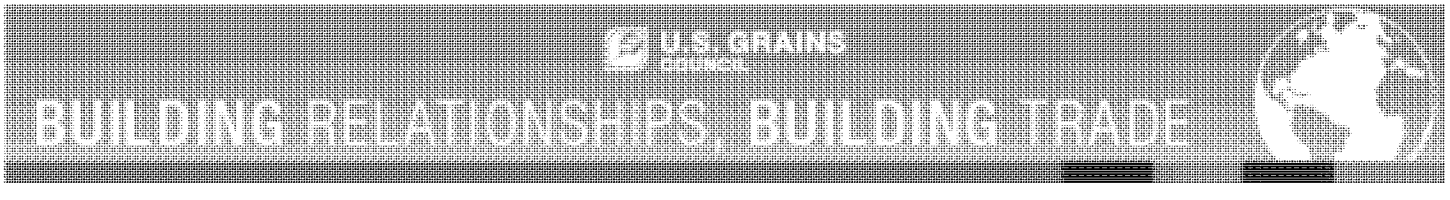
Link - Owners of a solar energy farm in Massachusetts have reached a settlement with the state's attorney general's office to remediate a large tract of wetlands and riverfront damaged during construction of the site in 2018.

East Hampton Star: Group Sues to Block Wind Farm Cable in Wainscott

Link - The suit charges that the town "improperly rushed the grant of easement prior to the completion of the environmental and regulatory process," according to a statement from the group.

Biomass Magazine: Vilsack: Biofuels, bioenergy will help meet climate goals

Link - Secretary of agriculture nominee Tom Vilsack stressed the important role biofuels and bioenergy will play in meeting the Biden administration's climate goals during a Feb. 2 hearing before the Senate Committee on Agriculture, Nutrition and Forestry.



FOOD & NUTRITION

Associated Press: Pandemic cuisine: Odd pairings, old favorites on the menu
Link - Whether it's kimchi, beets or broccoli, the pandemic has had a strange impact on food cravings that goes beyond the joy of comfort eating.

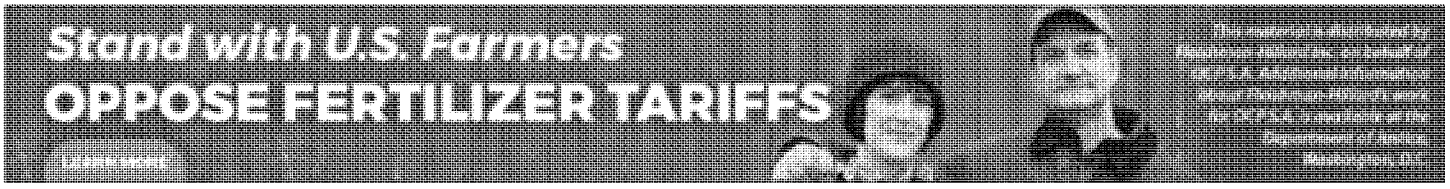
Omaha World Herald: Bills to let small butchers sell meat more easily draw opposition from state ag director
Link - On Tuesday, a panel of state lawmakers heard two proposals to expand the flow of meat from farm to fork. Both were opposed by the state agriculture director, which prompted some static from one senator.

FoxNews: Subway defends its tuna as '100% real,' offers 15% off amid continuing sandwich saga
Link - Subway is trolling its tuna haters by doubling down and promoting its tuna as the reel deal — made with real fish that is — as this strange sandwich saga continues to unfold.

Vine Pair: Uber Acquires Alcohol Delivery Platform Drizly for $1.1 Billion
Link - On Tuesday, Uber announced it will acquire Drizly, the leading on-demand alcohol delivery service in the U.S., for $1.1 billion.

NBC Bay Area: Urban Farming: How Rooftop Gardens Are Feeding Families and Helping the Planet
Link - For a growing number of Bay Area families, a chunk of their food is coming from backyards and rooftops.

Fox News: Connecticut lawmakers propose making pizza the official state food
Link - Rep. Patricia Dillon and Sen. Gary Winfield, both from New Haven, introduced a bill to make the food's status in the state official.



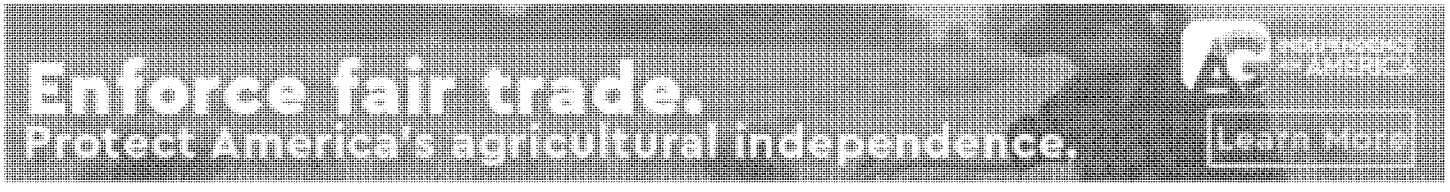
TRADE & INTERNATIONAL

CNBC: California asks Federal Maritime Commission to take action on agricultural shipping delays

Link - A letter to the FMC was signed by several state officials asking for immediate steps in reviewing the carriers' export policies.

The Press and Journal: Farmers 'trusted more' by UK consumers during pandemic

Link - Consumer trust in UK farmers has grown during the coronavirus pandemic, according to a new report.



LABOR & IMMIGRATION

Fresno Bee: After 'major' COVID-19 outbreak, Foster Farms begins vaccinating workers in Fresno

Link - Foster Farms is facing a lawsuit from the United Farm Workers for a September outbreak in Livingston.

Los Angeles Times: Biden's early immigration orders largely limited to reviewing, not undoing, Trump policy

Link - President Biden aims to undo President Trump's tangle of executive orders and administrative restrictions on immigration, but the situation "will not transform overnight," an official said.

KXTV: COVID-19: Why UC Davis is launching a farmworker safety project before harvest ramp up

Link - It's a $3 million project focused on training and safety information for farmworkers and community groups.

Good Fruit Grower: Washington state fines Gebbers Farms $2 million for COVID-19 safety violations

Link - Summer deaths of two H-2A employees spurred investigations of health and safety violations in housing and transport.

Capital Press: Washington Democrats seek to nix tax break for H-2A housing

Link - Two Senate Democrats introduced legislation Monday to raise taxes on building and repairing farmworker housing if the units accommodate any foreign workers with H-2A visas.

Big Island Now: COVID-19 Cluster Identified at Coffee Farm in Kona

Link - Out of about 100 employees, 18 workers were diagnosed with the coronavirus.

CONSERVATION & WILDLIFE

Reuters: USDA can steer farm aid money to fight climate change, Biden ag secretary nominee says

Link - The White House wants to tap a pool of funds from the U.S. Department of Agriculture's Commodity Credit Corporation (CCC) to support on-the-farm efforts to fight climate change, Tom Vilsack, President Joe Biden's nominee to run the USDA, said on Tuesday.

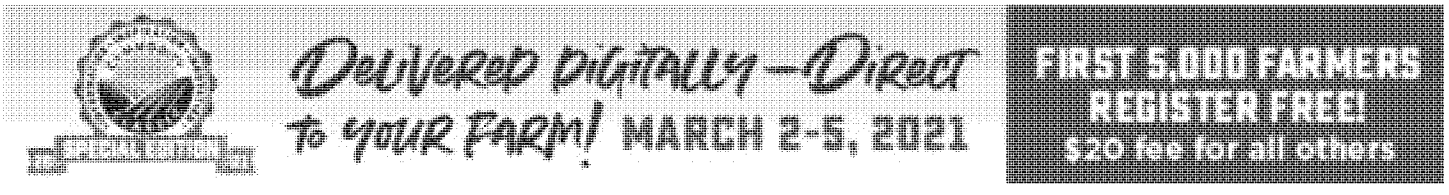
Deseret News: Utah's great outdoors bolster its quality of life

Link - The Quality Growth Commission uses a Utah approach to open lands.

CBS News: Treasury names "forcefully addressing the threat of climate change" a top priority
Link - Newly confirmed Treasury Secretary Janet Yellen is giving climate change a prominent role in her talks with her counterparts around the world, signaling a significant shift by the Biden administration to prioritize addressing climate change not just from the White House but also at the agency.

Associated Press: Democrats urge investigation into removal of owl protections
Link - Eight Democratic lawmakers called Tuesday for an investigation into "potential scientific meddling" by the Trump administration in its rule to remove critical habitat protections for the imperiled northern spotted owl in the Pacific Northwest.

The Hill: Fish and Wildlife Service defends gray wolf delisting from endangered list
Link - The Fish and Wildlife Service (FWS) in a letter to environmental groups signaled it may not put the gray wolf back on the endangered species list after it was removed under the Trump administration.



MISCELLANEOUS

KOAT: State tells farmers not to farm unless they 'absolutely need to'
Link - Some farmers say they are going to farm.

YourErie: Women in agriculture are making a positive change in Pennsylvania's farming landscape
Link - The life of a farmer can be hard, but it's not just the men working the land anymore.

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FARM & RURAL POLICY

Agri-Pulse: Daybreak for February 18, 2021

Link - (Audio) USDA advisers talk priorities; Long-lasting damage from Arctic blast; Commodity groups fight fertilizer duties.

Agri-Pulse: DriveTime: February 17, 2021

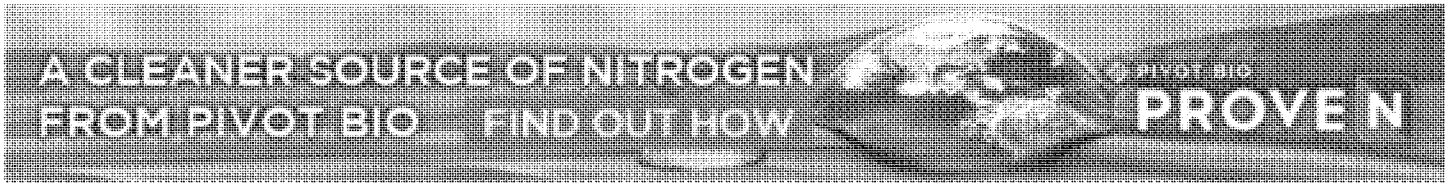
Link - (Audio) Reports on rural broadband, soybean grower priorities, and the pricing of electric vehicle technology.

Agri-Pulse: FCC launches broadband data task force

Link - A new government task force is charged with improving broadband data and mapping tools.

Salina Post: Kansas net farm income climbed in 2020; 2021 looks promising

Link - Kansas farms appear to be moving out of the shadow of the global pandemic, according to two Kansas State University agricultural economists.



ENERGY

Lincoln Journal Star: Spill from troubled Mead ethanol plant traveled 4 miles in waterways, state says

Link - The Nebraska Department of Environment and Energy on Wednesday said it's continuing to monitor the release of waste material from AltEn Ethanol near Mead .

Associated Press: Texas blackouts fuel false claims about renewable energy

Link - With millions of Texas residents still without power amid frigid temperatures, conservative commentators have falsely claimed that wind turbines and solar energy were primarily to blame.

KXTV: Texas power losses are coming from all energy sources

Link - Some have blamed renewable energy, and wind energy in particular, as the culprit for Texas' woes. But the evidence doesn't support that.

The Missouri Times: Missouri House considering solar power fees

Link - Jeff Knight would require customers using solar panels to pay a fee and for those selling generated energy back to the company to pay for access to the grid.

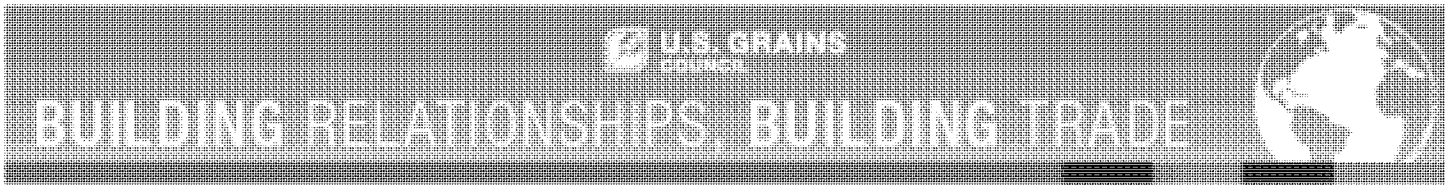
Denver Business Journal: Vestas closing Colorado plant, laying off hundreds as it

consolidates North American wind turbine production

Link - U.S. wind power orders have slowed, and the Danish turbine maker is shrinking its North American manufacturing presence.

Reuters: Biden scraps Trump plan to weaken environmental rules to build renewables in California

Link - The Biden administration on Wednesday said it would scrap a Trump-era proposal to weaken environmental protections for millions of acres of California desert to ease development of wind and solar energy projects.



FOOD & NUTRITION

Agri-Pulse: California Tops USDA NASS Vegetables Report for 2020

Link - California continues to lead the country in vegetable production although planted acres dropped in 2020.

Eater: Winter Weather Crisis Is Also a Food Crisis

Link - Widespread power outages and freezing weather leave many in the U.S. without food and water

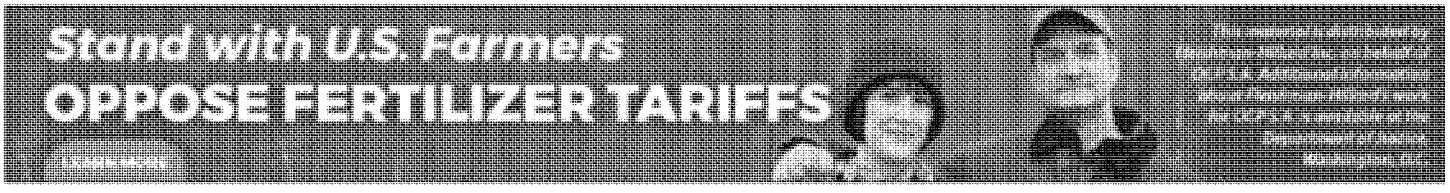
FoxNews: Winter storm power outages and food safety: Refrigerated foods unsafe to eat after 4 hours, CDC warns

Link - As Americans nationwide brace for yet another wintry punch, persistent power outages for millionscould make certain foods unsafe to eat, warns the Centers for Disease Control and Prevention (CDC).

CNN: Burger King will replace its chicken sandwich as competition grows fierce

Link - Burger King doesn't want to come out a loser in fast food's chicken sandwich wars. So it's planning an upgrade.

FOX 13 Tampa Bay: 'Florida Farm Finder' connects consumers to fresh local products
Link - The pandemic created a new opportunity for Florida's farming community. Consumers can now go online and connect with farms locally and across the state for fresh products through a Facebook page and website called 'Florida Farm Finder.'



TRADE & INTERNATIONAL

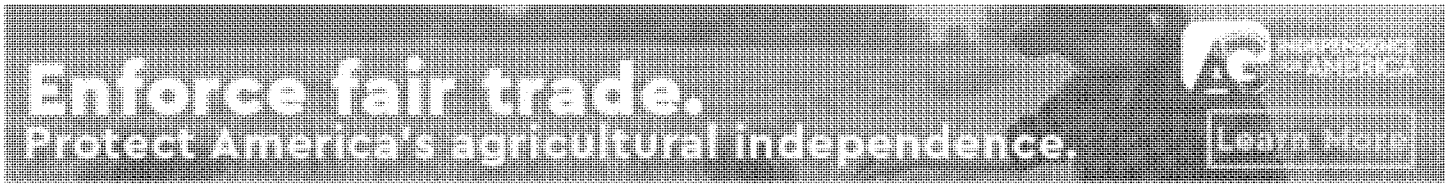
CBS Los Angeles: Gov. Gavin Newsom Heaps Praise On Farm Workers While Visiting Vaccination Site In Coachella Valley
Link - While visiting a vaccination site in the Coachella Valley, Gov. Gavin Newsom took time to thank the region's farm workers for their essential work during the pandemic.

Salem Reporter: As harvest season looms, agriculture and farmworker groups
Link - The Oregon Farm Bureau is arguing that a state rule aimed at preventing the spread of Covid in farmworker housing has made workers less safe. But Marion County farmworker advocates say the pandemic has made long-standing issues around farmworker housing worse and the rule has kept workers from getting sick.

San Francisco Chronicle: Biden administration sides with California in allowing union reps access to farmworkers
Link - The state farm labor board adopted the regulations shortly after California enacted the nation's first law allowing farmworkers to join unions in 1975.

The New York Times: Biden Signals He's Flexible on Immigration Overhaul

Link - After two decades of failure, advocates for the broadest possible overhaul of the nation's immigration laws are considering a new strategy: pressing for piecemeal legislation.



LABOR & IMMIGRATION

TIME: Minari and the Real Korean-American Immigrants Who Have Farmed U.S. Soil for More Than a Century
Link - There are many Korean American farmers who acutely recognize the experiences portrayed in Minari—and, until now, had never seen themselves reflected onscreen with such specificity

Michigan Radio: Nearly 80000 farm, agriculture workers eligible for vaccine
Link - On March 1, tens of thousands of Michiganders will be added to the growing pool of those eligible to receive the COVID-19 vaccine, the state health department announced Monday.

The River Newsroom: Essential, Invisible, Ineligible: Food and Farm Workers Wait for Vaccine
Link - New York has not included vulnerable agricultural workers alongside other essential employees in vaccine eligibility thus far.

NPR: As California Expands Vaccination, Some Worry Farm Workers Will Lose Out
Link - some labor groups worry that farmworkers are losing their place in line, a problem for California's Latino population, which has been disproportionately affected by COVID-19.

NBC News: Biden, Hill Democrats plan to unveil immigration reform bill this week
Link - The proposal is expected to include an earned pathway to citizenship for 11 million undocumented immigrants and expand the refugee resettlement program.

CONSERVATION & WILDLIFE

Agri-Pulse: Dairy farmers respond to Newsom's 30x30 order: Restore incentive dollars first
Link - California dairy farmers have one clear message for the Newsom administration when it comes to combating climate change.

Agri-Pulse: Ag Council president reflects on drinking water collaboration
Link - Emily Rooney, president of the Agricultural Council of California, spoke with Agri-Pulse about an unexpected coalition that helped bring about the 2019 California safe drinking water law and why the issue is important to agriculture.

Agri-Pulse: Trump water czar lists Biden policies to watch
Link - Be clear, specific and aggressive at the negotiating table, advises former Interior Deputy Assistant Secretary Aubrey Bettencourt.

The Hill: Capito asks White House to allow toxic chemicals rule to proceed
Link - Sen. Shelley Moore Capito (R-W.V.) in a letter to the White House on Wednesday said the Biden administration has frozen a "significant" action on perfluoroalkyl and polyfluoroalkyl substances (PFAS) drinking water standards with a recent executive order and asked the administration to "promptly" publish the rule in question.

Reuters: Freak cold in Texas has scientists discussing whether climate change is to blame
Link - The freak cold spell that has killed at least 21 Americans and shut down power for days in Texas has revived scientific discussion over whether climate change could be delivering this week's chill.

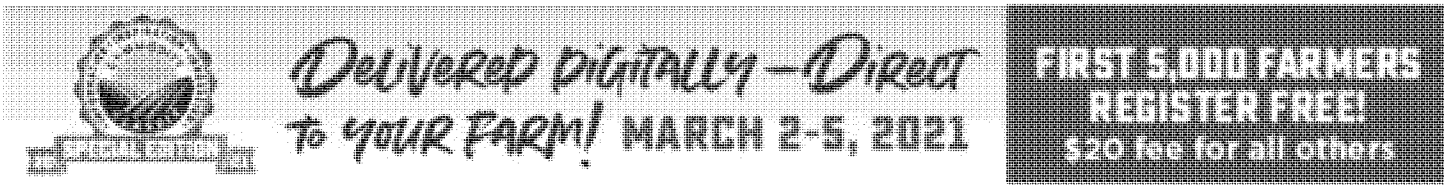
The Guardian: 'America, send us your ideas': Biden pledges to protect 30% of US lands by 2030

Link - To reach this conservation goal, the country will have to conserve more than 400m acres of land and waterways in the next 10 years.

NBC2 News: Red tide responsible for dead birds seen on Sanibel-Captiva bridges
Link - The dead birds seen on Sanibel and Captiva causeway bridges likely died as a result of red tide, officials said.

Miami Herald: Cruise lines, mayor say shore power coming to PortMiami 'as expeditiously as possible'
Link - Polluting cruise ships may finally be able to plug in at PortMiami, slashing emissions that harm humans and contribute to climate change.

The Desert Sun: Biden's Interior Department halts Trump's attempt to change desert conservation plan
Link - TheTrump administration's proposed changes would have resulted inat leasta 1.5-million-acre reduction in lands designated as "areas of critical environmental concern."



MISCELLANEOUS

WMBB: State Agriculture Commissioner Nikki Fried holds town hall on crop insurance
Link - Farmers and agriculture industry leaders from all over the Panhandle came out for a town hall hosted by State Agriculture Commissioner, Nikki Fried on Wednesday.

Jamestown Sun: Jamestown area economic leaders support agricultural innovation fund
Link - A bill to create an agricultural innovation fund is supported by local legislators and economic leaders.

Columbia Missourian: Tractor Supply acquires Orscheln Farm and Home for $297M

Link - Tractor Supply Co. announced Wednesday that it will acquire the network of 167 Orscheln Farm and Home stores operating in 11 states.

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To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Agri-Pulse Daybreak Feb. 12: Can Senate Ag get together on climate? * Taxpayers saving from market boom * 'Miracle honey'

Agri-Pulse Daybreak Feb. 12: Can Senate Ag get together on climate? * Taxpayers saving from market boom * 'Miracle honey'

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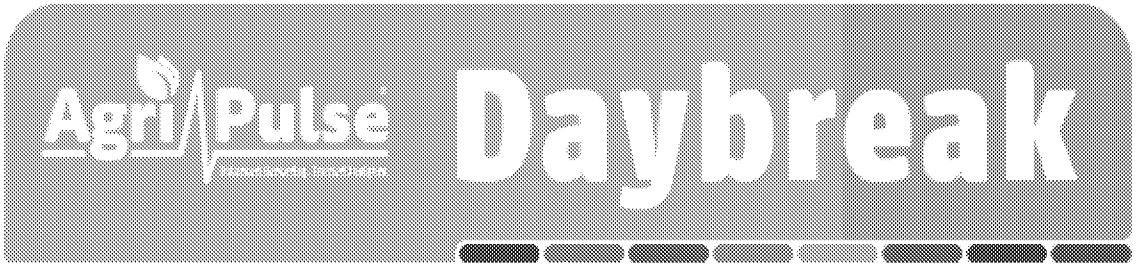

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Boozman: Climate policy threatens farm bill

There are new signs of division on the Senate Agriculture Committee when it comes to climate change. The committee's top Republican, John Boozman, told members of the National Cotton Council Thursday that funding to address climate change could come out of existing farm bill programs.

"You'll hear that it's paid for, that it doesn't cost anything," he said of the Democratic climate plan. "The reason it doesn't cost anything is that ... the monies that they need to make it work will come out of the farm bill. And so something else will be displaced."

But, but, but: Ag Committee Chairwoman Debbie Stabenow told reporters recently that she wants to put more money into conservation programs to promote climate-friendly practices but that she wants the funding to come out of separate climate legislation that Democrats plan to move later.

Responding to Boozman, a spokesperson for Stabenow says she "remains laser-focused on flexible, producer-led policies to help farmers and foresters create new revenue streams as they cut down on emissions and sequester more carbon in their soil and trees."

AGree report eyes subsidies, carbon bank

A new paper released by AGree's Climate, Food, and Agriculture Dialogue does suggest making some key changes in farm bill programs.

The report says, for example, that Congress could incentivize farmers to adopt conservation practices by offering them better coverage under commodity programs. "With a higher reference price … producers that have implemented conservation practices in their fields would have additional market price protection over producers that do not," the report says.

The report also says USDA research agencies need to coordinate better with the Farm Service Agency and NRCS.

The report was written by Chris Adamo, vice president for federal and industry affairs at Danone North America, and Bruce Knight, a consultant who was chief of the Natural Resources Conservation Service during the George W. Bush administration.

Growers switching crops on market boom

Despite a sharp increase in cotton prices in recent months, some southern farmers are going to be reducing their plantings of cotton this spring. The reason is simple: Markets for corn, soybeans and some other crops look even better.

According to the National Cotton Council's annual planting intentions survey, farmers plan to plant 11.5 million acres of cotton this year, which would be a reduction of 5.2% from last year. Farmers in Texas, by far the largest producer, are expected to trim their acreage by 5.7% to 6.4 million acres.

KC Fed: Farm income stronger than expected

The Kansas City Fed said Thursday in its latest quarterly survey that increases in crop prices are helping the farm economy rebound across much of the Great Plains,

"About 80% of bankers expected farm incomes for the entire year would be higher than initially projected in early 2020 when factoring in government payments, and nearly 20% expected the increase to be significant," KC Fed economists said in their summary.

Taxpayers to save on farm subsidies

One of the benefits of rising commodity prices is that they reduce the cost of federal commodity programs. The Congressional Budget Office's new estimates of farm program spending project that USDA will pay out $3.95 billion through the Price Loss Coverage program in the fiscal year that starts Oct. 1. That's down from the previous estimate of $6.8 billion.

Take note: CBO projects the federal budget deficit will hit $2.3 trillion this year, and that's not counting the impact of the $1.9 trillion stimulus package now making its way through the House. Annual deficits are projected to average $1.2 trillion a year over the next 10 years.

It remains to be seen whether and how that affects President Biden's plans for new spending on infrastructure and climate.

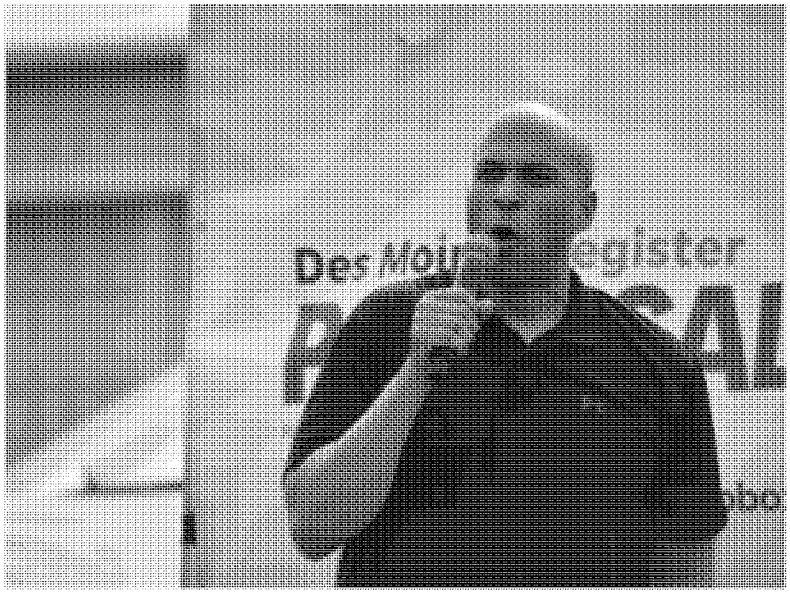
February starts with big corn, soy exports to China

China made big commitments to buy U.S. corn in the last full week of January, and the following week saw significant physical

shipments of the grain to Chinese buyers, according to the latest USDA trade data.

The U.S. shipped 357,600 metric tons of corn to China from Jan. 29 through Feb. 4, helping to push total U.S. exports for the week to a marketing-year high of about 1.6 million tons. That was a 57% increase from the previous week.

U.S. soybean shipments to China were also strong for the latest seven-day reporting period. The Chinese imported about 1.2 million tons of U.S. soy during the week, more than half of the total 2.2 million tons that the U.S. exported.



Sen. Booker

New Ag committee members take on Tyson

Two new members of the House and Senate Agriculture committees who are outspoken critics of the livestock industry are calling on the Federal Trade Commission to investigate one of the nation's largest meat processors, Tyson Foods.

The lawmakers claim Tyson has been making "false and misleading claims" about its poultry products regarding labor, sustainability, and animal welfare practices.

"The alleged misinformation employed by Tyson to sell its products may provide the company with an unfair advantage over its competitors," Sen. Cory Booker, D-N.J., and Rep. Ro Khanna, D-Calif., say in a letter to the FTC. Sen. Elizabeth Warren, D-Mass., also signed the letter.

The lawmakers introduced legislation in the last Congress to impose a moratorium on new concentrated animal feeding operations and to phase out the largest existing CAFOs.

Tyson's take: The company declined to comment on the lawmakers' allegations. But a spokesman said the company is "transparent about our business operations and practices through our annual sustainability reports, third-party animal welfare audits, and other public reporting."

Customs finds noodle surprise

Customs officials in Cincinnati inspected a shipment of "herbal pasta" from Turkey last week and found it also held more than $1 million worth of Viagra. According to a statement released Thursday by U.S. Customs and Border Protection, inspectors found 17,400 pills, plus 43 boxes of suspicious honey.

CBP and FDA determined that the sweet substance – called "miracle honey" – turned out to be laced with sildenafil, the active ingredient in Viagra.

She said it. One of the top trade questions farmers have is how the Biden administration will deal with China, but the White House provided no new clues after a conversation between presidents of the two countries on Wednesday.

When White House spokeswoman Jen Psaki was asked Thursday if the two presidents discussed trade, she didn't respond directly. She said President Joe Biden "talked about the fundamental concerns he has … about Beijing's coercive and unfair economic practices," including "the crackdown in Hong Kong, human rights abuses across the country, increasingly assertive actions in the region, including toward Taiwan."

Steve Davies, Bill Tomson and Ben Nuelle contributed to this report.

Questions? Tips? Contact Philip Brasher at philip@agri-pulse.com

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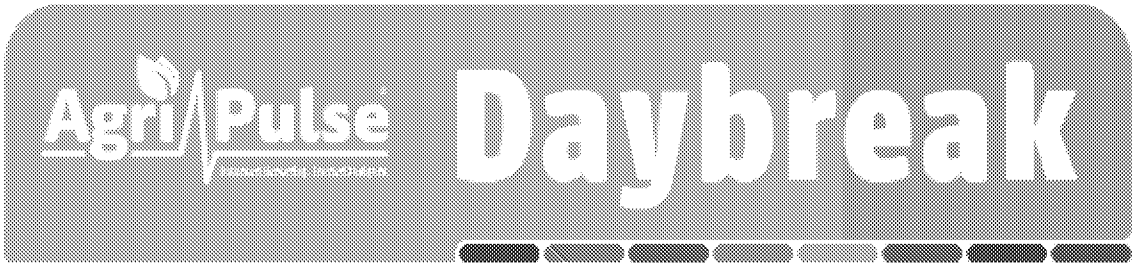
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Agri-Pulse Daybreak Feb. 3: Industry critic gets Senate Ag seat * Vilsack advances * Survey shows active interest in carbon payments

Agri-Pulse Daybreak Feb. 3: Industry critic gets Senate Ag seat * Vilsack advances * Survey shows active interest in carbon payments

Your Agri-Pulse Daybreak for February 3, 2021



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Senate Ag expands leftward

The Senate Agriculture Committee is expanding its membership with three new Democrats, who could give the committee a push to the left on some issues, including climate policy.

The new members include Cory Booker, D-N.J., a vegan who's a sharp critic of large-scale livestock farming as well as checkoff

programs. He also has pushed for big increases in conservation spending to address climate change.

The other new members: Newly elected Raphael Warnock of Georgia and Ben Ray Lujan of New Mexico. Lujan had a near-perfect record with the League of Conservation Voters as a House member.

Pennsylvania Democrat Bob Casey is leaving the panel.

Keep in mind: Republicans haven't announced their membership yet, but freshman Kansas Sen. Roger Marshall, R-Kan., is expected to get a seat. He sat in on Tuesday's confirmation hearing for Tom Vilsack, President Joe Biden's nominee for agriculture secretary. Marshall didn't get to ask questions.

By the way: The committee's incoming chairwoman, Debbie Stabenow of Michigan, has also taken a seat on the Environment and Public Works Committee, which will broaden her influence when it comes to climate policy.

Vilsack appears online before Senate Ag. (Joy Phillippi)

Vilsack heads for quick confirmation

Stabenow says she's looking for the "soonest opportunity" to get a Senate floor vote on Vilsack's nomination. "I'd love for it to be this week, we'll just have to see," Stabenow told reporters after the committee unanimously approved Vilsack during a brief meeting Tuesday afternoon off the Senate floor.

Vilsack used his confirmation hearing Tuesday morning to address concerns about Biden's climate policy, including plans to set up a carbon bank through USDA and Biden's push for electric vehicles.

Vilsack assured senators that using the Commodity Credit Corp. to fund a carbon bank wouldn't affect farm program payments. He also sought to dispel concerns that the committee's ranking Republican, John Boozman, has that carbon credits would primarily benefit investors and traders.

By the way: There were similar concerns that former President Barack Obama's unsuccessful cap-and-trade plan would have been a huge windfall for Wall Street.

For more on the Vilsack hearing, plus a look at the concerns about the Biden administration's trade policy with China, be sure and read this week's Agri-Pulse newsletter.

Survey shows farmer interest in carbon payments

Farmers are showing interest in getting paid for capturing carbon as part of their operations, according to the latest Purdue/CME Group Ag Economy Barometer.

Thirty percent of respondents to the January survey were "aware of opportunities to receive a payment for capturing carbon." the survey found. Of those, slightly more than one in five were in active discussions about receiving carbon payments.

Why it matters: The responses translate to between 6% to 7% of farmers who "have given consideration to contractually sequestering carbon," according to the survey, which tracks farmer sentiment monthly.

Incoming ranking Republican at Vilsack hearing. (Joy Phillippi)

Boozman worried about budget process

Congressional Democrats are moving ahead with their threat to use the budget reconciliation process to enact Biden's $1.9 trillion stimulus plan, and Boozman fears that will mean the Ag Committee will have little input on the aid package.

"When you're making those kinds of decisions concerning ag policy, big decisions, the idea of bypassing the Senate Agriculture Committee is a huge problem," the Arkansas senator told reporters.

The budget process would allow Democrats to pass the aid bill with no GOP votes.

Milk producers want US in Pacific Rim pact

U.S. dairy is more dependent than ever on expanding export markets, and National Milk Producers Federation CEO Jim Mulhern is pressing the Biden administration to follow the British lead and apply to join the Comprehensive Progressive Trans-

Pacific Partnership, the Pacific Rim trade pact that former President Donald Trump pulled the U.S. out of in 2017.

Key Asian markets like Vietnam and the Philippines, with their expanding middle classes and rising demand for dairy, are examples of foreign countries where the U.S. can boost sales. Both countries, along with Japan and eight others, are members of the CPTPP. The UK applied to join last weekend and China has expressed interest in doing so as well.

Mulhern is also pressing the Biden administration to finish negotiations that are already ongoing for a free trade pact with the UK and Kenya.

Trump's 'terrorism' label for Cuba under review

One of the last actions taken by the Trump administration was to declare Cuba a "state sponsor of terrorism," and now the Biden administration is considering its options, Secretary of State Tony Blinken said in an interview with MSNBC's Andrea Mitchell.

The declaration won't prevent U.S. agricultural exports to Cuba, according to Paul Johnson, president of the U.S. Agriculture Coalition for Cuba, but it further stresses the relationship between the two countries that U.S. farm groups would like to see repaired.

Cuba imports about $2 billion worth of ag commodities per year, but only a small percentage comes from the U.S. Still, Cuba is the fourth largest foreign market for U.S. poultry, according to the USA Poultry and Egg Export Council.

Meat industry touts lower COVID numbers

COVID-19 cases among meat and poultry workers have fallen considerably since May, according to the North American Meat Institute, which represents meat and poultry processors.

Citing data from the Food and Environment Reporting Network, NAMI said the meat and poultry sector had an average of 32.6 new reported cases per 100,000 workers per day in January 2021, two-thirds lower than the average of 98.4 new reported cases per 100,000 workers per day in May 2020. The current infection rate also is about 60% lower than the population as a whole, NAMI says.

Why it matters: The report comes the day after a House committee sent letters to major meatpackers seeking documents on how they have handled COVID at their facilities.

He said it. "Agriculture is probably the first and best way to begin getting some wins in the climate area." – Tom Vilsack, on the importance of ag carbon policy to the Biden administration.

Ben Nuelle, Steve Davies and Bill Tomson contributed to this report.

Questions? Tips? Contact Philip Brasher at philip@agri-pulse.com

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Sent: 2/18/2021 9:59:26 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Agri-Pulse Daybreak Feb. 18: USDA advisers talk priorities * Long-lasting damage from Arctic blast * Commodity groups fight fertilizer duties

Agri-Pulse Daybreak Feb. 18: USDA advisers talk priorities * Long-lasting damage from Arctic blast * Commodity groups fight fertilizer duties

Your Agri-Pulse Daybreak for February 18, 2021

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Agri-Pulse Daybreak

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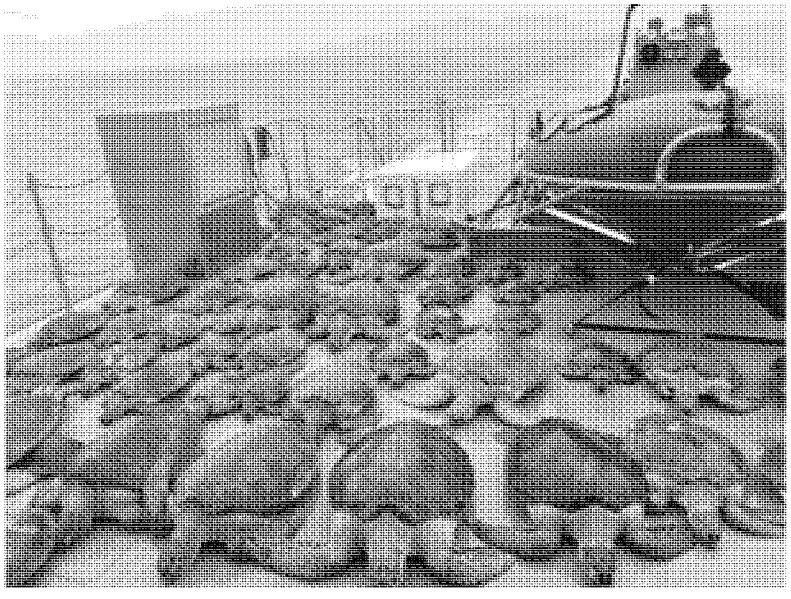
Ag Outlook kicks off, virtually

USDA's 97th annual Ag Outlook Forum kicks off this morning, and for the first time the meeting will be held online. USDA's new chief economist, Seth Meyer will provide the department's annual forecast for crop and livestock production this year.

The meeting will be missing the traditional address from the agriculture secretary since Tom Vilsack is still awaiting confirmation. But the department's new chief of staff, Katharine Ferguson, will be outlining the administration's policies, and top USDA policy advisers, including Robert Bonnie, also will be speaking. Bonnie is helping shape USDA's climate policy.

Looking ahead: On Friday, *Agri-Pulse* President Sara Wyant will moderate a discussion between some of the nation's top farm leaders on hot topics in agriculture.



How cold was it? Sea turtles stunned by the rare Arctic blast had to be rescued near Brownsville, Texas. (Texas Parks and Wildlife)

Big Freeze to have long-lasting ag impacts

The central U.S. and eastward should start to see milder, dry weather return late this week. But USDA Meteorologist Brad

Rippey tells *Agri-Pulse* the impacts on agriculture from the polar vortex will still be felt up to a year from now.

Damage to citrus trees in Texas' Rio Grande Valley may affect next year's orange and grapefruit crops, Rippey says. About 55% of the current citrus crop hadn't been harvested yet and is lost, according to the Texas Farm Bureau.

Rippey says the Plains' winter wheat crop may have been lost, too, and vegetable production in Texas as well as sugarcane crops in Louisiana and Texas are at risk.

Livestock, poultry, and other farm operations will have to come back from the extended cold wave and power outages.

Extreme cold and snow battered most of the central and southern U.S. this past week. Temperatures in the Texas Panhandle plunged as low as 20 degrees below zero.

Blinken: US can do business with China while addressing abuses

The U.S. can continue to do business with China while at the same time holding the country accountable for humanitarian and other abuses, says Secretary of State Tony Blinken. That should come as a relief to U.S. farmers because China is breaking records for its agricultural imports from the U.S.

When asked in an interview by NPR's Mary Louise Kelly how the U.S. can do business with a country that is guilty of genocide, Blinken responded: "This has been a challenge … for American administrations going back decades and decades, and we have to be able to find ways to do both."

Farm groups weigh in against phosphate duties

The American Soybean Association, National Corn Growers Association and National Cotton Council are joining the fray over a U.S. company's efforts to convince the Commerce Department to slap duties on phosphate fertilizer imports from Morocco and Russia. The U.S. International Trade Commission is currently weighing The Mosaic Co.'s claims that they are harmed by subsidized imports. A decision is expected in March.

"We believe countervailing duties on these imports will have a negative impact on the availability of phosphate fertilizer in the United States and, in turn, adversely affect crop production and farmer livelihoods," ASA President Kevin Scott said in a statement after the farm groups filed their joint comments with the ITC.

The Commerce Department has already determined that if the ITC rules in favor of Mosaic, it will levy countervailing duties of 19.97% on imports from Moroccan producer OCP, 47.05% on Russian producers PhosAgro and EuroChem and 17.2% on all other Russian producers.

Commerce set preliminary duties on Moroccan and Russian phosphate fertilizer in November that would be returned if Mosaic loses its case, but companies like OCP had already stopped shipping to the U.S. out of concern they would have to pay the duties.

Haaland likely to face Senate grilling

Next week's confirmation hearing of Deb Haaland (above) to lead the Interior Department should include some fireworks, as Republicans plan to question her sharply over her opposition to fracking and President Joe Biden's current moratorium on new oil and gas leasing on federal lands.

The Senate Energy and Natural Resources Committee will hold the hearing Tuesday, and ENR member Steve Daines of Montana has vowed to "work to block the nomination any way he can," a

spokesperson said Wednesday, including by putting a hold on it. Daines issued a statement Feb. 5 criticizing the moratorium and noting Haaland's support of the Green New Deal.

On Monday, Texas Sen. John Cornyn, who is not an ENR member, cited a Wall Street Journal article that reported Haaland had joined protests against the Dakota Access pipeline and opposes fracking. In response, ENR member Sen. Bernie Sanders said, "Great news. We need an Interior secretary who has the guts to take on fossil fuel CEOs whose greed is destroying the planet."

Keep in mind: If Haaland has no GOP support, Democrats will have to stay united to get her confirmed. ENR Chairman Joe Manchin, D-W.Va., hasn't said how he will vote on Haaland, but he told E&E News he tries to be "deferential" to administration picks for cabinet positions.

Task force to advise on broadband mapping

Rural broadband advocates are praising the Federal Communications Commission for announcing a broadband data task force that will lead an agency-wide effort to collect detailed data and develop more precise maps about high-speed internet availability.

Shirley Bloomfield, CEO of NTCA-The Rural Broadband Association, says accurate data on broadband availability is "essential" in driving informed decision-making and appropriate distribution of funds.

Read our report on the task force here.

APHIS employees to aid vaccination effort

USDA's Animal and Plant Health Inspection Service is using more than 100 employees to help in COVID-19 vaccination efforts, as the Biden administration seeks to meet its goal of administering vaccines to 100 million Americans in Biden's first 100 days in office.

Most of the APHIS employees are in Nevada and Oklahoma. Eight also are in Texas, six in Washington state and four in Oregon, with another nine virtually deployed to help the Federal Emergency Management Agency, which is leading the vaccination effort.

Additional deployments will be announced later.

He said it. "President Trump was right to take a tougher line on some of the egregious things that China has done and is doing that are counter to our interests and counter to our values. But I think the way that we went about doing it did not produce results." - Secretary of State Tony Blinken to NPR.

Ben Nuelle, Bill Tomson and Steve Davies contributed to this report.

Questions? Tips? Contact Philip Brasher at philip@agri-pulse.com

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Appointment

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Sent: 1/25/2021 8:57:39 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]

Subject: Accepted: Climate Change Website
Location: Microsoft Teams Meeting

Start: 1/27/2021 4:30:00 PM
End: 1/27/2021 5:00:00 PM
Show Time As: Busy

Message

From: Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
Sent: 1/26/2021 6:05:17 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: Meeting with David Doniger (Climate and Clean Energy Program) re: Power Plant Plans & CBD NAAQS Petition

I don't know what the topic is, but mike and I are the only ones invited. You may want to include Chris.

Fyi, last week (I think) Sarah, Chris, and I participated in a call with David and some NRDC folks, where NRDC outlined some of the analytical work they've been doing on the power sector front.

Of course it's only a half hour...

-----Original Message-----
From: Doniger, David <ddoniger@nrdc.org>
Sent: Tuesday, January 26, 2021 12:19 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: Re: Meeting with David Doniger (Climate and Clean Energy areProgram) re: Power Plant Plans & CBD NAAQS Petition

Hi Joe,

Sorry, could you clarify, are we meeting at 3 or 4? I got two invitations.

Sent from my iPhone

> On Jan 26, 2021, at 12:12 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:
>
>
> _____
> _____
> Microsoft Teams meeting
> Join on your computer or mobile app
> Click here to join the
> meeting<https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?
> url=https%3A%2F%2Fteams.microsoft.com%2Fl%2Fmeetup-join%2F19%253ameeti
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> joiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=clrmb41sB7J
> yD1OJ8B3StoBWMdIqjQJus31VQXAL%2BEs%3D&reserved=0>
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> More<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%252
> Faka.ms%2FJoinTeamsMeeting&data=04%7C01%7CTsirigotis.Peter%40epa.g
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> Meeting
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> egg%3D&reserved=0>
> _____
> _____
>

Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 1/27/2021 3:15:27 AM
To: Campbell, Ann [Campbell.Ann@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Rakosnik, Delaney [rakosnik.delaney@epa.gov]; Kabanda, Thierry [Kabanda.Thierry@epa.gov]
Subject: RE: Meeting with David Doniger (Climate and Clean Energy Program) re: Power Plant Plans & CBD NAAQS Petition
Attachments: Climate and Clean Energy Program_012621 (002).rtf

Hi Ann, thanks – here is the revised sign-in sheet from today's discussion. Thanks,

Tomás

Climate and Clean Energy Program...

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Tuesday, January 26, 2021 9:41 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Rakosnik, Delaney <rakosnik.delaney@epa.gov>; Kabanda, Thierry <Kabanda.Thierry@epa.gov>
Subject: Meeting with David Doniger (Climate and Clean Energy Program) re: Power Plant Plans & CBD NAAQS Petition

Joe, Tomas – for recordkeeping purposes (and often for rulemaking dockets) we must keep a record of all transactions with external stakeholders. We've developed the attached sign in sheet to meet this need simply. I have filled it in with the information we have currently have regarding who will be in attendance and what they wish to discuss to give you a leg up. If you could confirm the information already populated in the sheet and/or remove/add additional information, that would be helpful. Don't worry too much about getting email addresses. Please let me know if you have any questions.

<< File: Climate and Clean Energy Program_012621.rtf >>

Subject: Meeting with David Doniger (Climate and Clean Energy Program) re: Power Plant Plans & CBD NAAQS Petition
Location: Microsoft Teams Meeting

Start: Tue 1/26/2021 4:00 PM
End: Tue 1/26/2021 4:30 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Goffman, Joseph
Required Attendees: Carbonell, Tomas; Tsirigotis, Peter; Mike Koerber (Koerber.Mike@epa.gov)

Microsoft Teams meeting

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Date: January 26, 2021

Meeting: **Climate and Clean Energy Program**

Rule(s) Discussed: Power Plants & CBD NAAQS Petition

Written Materials? Yes/ **No**

NAME	ORGANIZATION	EMAIL
Joe Goffman	EPA/OAR	
Tomas Carbonell	EPA/OAR	
David Doniger	Climate and Clean Energy Program (NRDC)	Ex. 6 Personal Privacy (PP)
Ben Longstreth	Climate and Clean Energy Program (NRDC)	
Starla Yeh	Climate and Clean Energy Program (NRDC)	
Peter Tsirigotis	EPA/OAR/OAQPS	
Mike Koerber	EPA/OAR/OAQPS	

Appointment

From: Murphy, Tina [Murphy.Tina@epa.gov]
Sent: 1/25/2021 8:44:17 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]

Subject: Accepted: Climate Change Website
Location: Microsoft Teams Meeting

Start: 1/27/2021 4:30:00 PM
End: 1/27/2021 5:00:00 PM
Show Time As: Busy

Message

From: Vincent, Marc [Vincent.Marc@epa.gov]
Sent: 3/11/2021 8:48:50 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Kim, Eun [Kim.Eun@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Spenillo, Justin [Spenillo.Justin@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]; Edwards, Jonathan [Edwards.Jonathan@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Hyde, Courtney [Hyde.Courtney@epa.gov]; Wolfe, Michael [Wolfe.Michael@epa.gov]; Lewis, Josh [Lewis.Josh@epa.gov]; Rowson, David [Rowson.David@epa.gov]; Veal, Lee [Veal.Lee@epa.gov]; Griggs, John [Griggs.John@epa.gov]; Cherepy, Andrea [Cherepy.Andrea@epa.gov]; Hengst, Benjamin [Hengst.Benjamin@epa.gov]; Bunker, Byron [bunker.byron@epa.gov]; Burch, Julia [Burch.Julia@epa.gov]; Harvey, Reid [Harvey.Reid@epa.gov]; Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]; Gunning, Paul [Gunning.Paul@epa.gov]; Newberg, Cindy [Newberg.Cindy@epa.gov]; Snyder, Carolyn [Snyder.Carolyn@epa.gov]; Hopkins, Daniel [Hopkins.Daniel@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Kornylak, Vera S. [Kornylak.Vera@epa.gov]; Brachtl, Megan [Brachtl.Megan@epa.gov]; Costa, Shelley [Costa.Shelley@epa.gov]; Whitlow, Jeff [Whitlow.Jeff@epa.gov]; Saltman, Tamara [Saltman.Tamara@epa.gov]; Monroe, Scott [Monroe.Scott@epa.gov]; LaRue, Steven [LaRue.Steven@epa.gov]; Mathias, Scott [Mathias.Scott@epa.gov]; Bullard, Pamela [Bullard.Pamela@epa.gov]; Alpert, Adina [Alpert.Adina@epa.gov]; Santiago, Juan [Santiago.Juan@epa.gov]; White, Sharon [White.Sharon@epa.gov]; Diaz, Charlene [diaz.charlene@epa.gov]; Wilds, Edward [Wilds.Edward@epa.gov]; White, Rick [White.Rick@epa.gov]; Stafford, Andrea [Stafford.Andrea@epa.gov]; Fine, Steven [fine.steven@epa.gov]; Siegel, Kelly C. [Siegel.KellyC@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Viswanathan, Krishna [Viswanathan.Krishna@epa.gov]; Watkins, Erica [Watkins.Erica@epa.gov]; Clark, Mike S. [Clark.Michael@epa.gov]; OAR Briefings [OAR_Briefings@epa.gov]; Suzuki, Debra [Suzuki.Debra@epa.gov]; Senter, Stephen [Senter.Stephen@epa.gov]; Millar, Emily [Millar.Emily@epa.gov]; Holden, Patricia [Holden.Patricia@epa.gov]; Marusiak, Eleanor [Marusiak.Eleanor@epa.gov]; Peacock, Grant [Peacock.Grant@epa.gov]; Kabanda, Thierry [Kabanda.Thierry@epa.gov]; Rakosnik, Delaney [rakosnik.delaney@epa.gov]; Henning, Julie [henning.julie@epa.gov]; Ward, Hillary [Ward.Hillary@epa.gov]
CC: DeLuca, Isabel [DeLuca.Isabel@epa.gov]; Millett, John [Millett.John@epa.gov]
Subject: Meeting Materials for 3/16 OAR Business Review
Attachments: March 2021 OAR Business Review Agenda.docx; Feb 2021 Bowling Chart_.xlsx; CM OAR 2-2021.docx; MBR Supplemental_FY21_March.xlsx; DRAFT Measure Pyramid and Current Status_3-11-21.pptx

Hi All,

Attached are the materials for the March 16, 3-4pm, OAR Business Review, which include the:

- Agenda;
- Bowling Chart;
- Countermeasures;
- MBR Supplemental (processes improved, employee ideas, celebrations); and
- Draft Measures Pyramid and Current Measure Status.

Please let us know if you have any questions.

Thank you,

Marc Vincent
Office of Program Management Operations
Office of Air and Radiation
(202)564-0876

-----Original Appointment-----
From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Tuesday, February 16, 2021 12:39 PM
To: Goffman, Joseph; Kim, Eun; Nunez, Alejandra; Carbonell, Tomas; Spenillo, Justin; Shaw, Betsy; Edwards, Jonathan;

Tsirigotis, Peter; Dunham, Sarah; Grundler, Christopher; Hyde, Courtney; Wolfe, Michael; Lewis, Josh; Rowson, David; Veal, Lee; Griggs, John; Cherepy, Andrea; Hengst, Benjamin; Bunker, Byron; Burch, Julia; Harvey, Reid; Lubetsky, Jonathan; Gunning, Paul; Newberg, Cindy; Snyder, Carolyn; Hopkins, Daniel; Koerber, Mike; Kornylak, Vera S.; Brachtl, Megan; Costa, Shelley; Whitlow, Jeff; Saltman, Tamara; Monroe, Scott; LaRue, Steven; Mathias, Scott; Bullard, Pamela; Alpert, Adina; Santiago, Juan; White, Sharon; Diaz, Charlene; Wilds, Edward; White, Rick; Stafford, Andrea; Fine, Steven; Siegel, Kelly C.; Shoaff, John; Campbell, Ann; Viswanathan, Krishna; Watkins, Erica; Clark, Mike S.; OAR Briefings; Suzuki, Debra; Senter, Stephen; Millar, Emily; Vincent, Marc; Holden, Patricia; Marusiak, Eleanor; Peacock, Grant; Kabanda, Thierry; Rakosnik, Delaney; Henning, Julie; Ward, Hillary
Cc: Harlow, David; DeLuca, Isabel; Millett, John; Moor, Karl
Subject: OAR Business Review
When: Tuesday, March 16, 2021 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

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Or call in (audio only)
Ex. 6 Personal Privacy (PP) hited States, Washington DC

Phone Conference ID: Ex. 6 Personal Privacy (PP)
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Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 1/27/2021 3:06:25 AM
To: Grundler, Christopher [grundler.christopher@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: following up on our call

Thank you Chris!

From: Grundler, Christopher <grundler.christopher@epa.gov>
Sent: Tuesday, January 26, 2021 7:48 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: Re: following up on our call

Sounds good. And FYI, ambushes welcome after 4 years of practical radio silence

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
(202) 343-9140 (Office)
(734) 645-5221 (Mobile)

On Jan 26, 2021, at 7:37 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Thanks, Chris. Appreciate the prompt response. We will take this one out for a stroll around the room on Thursday. Thanks, again.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Grundler, Christopher <grundler.christopher@epa.gov>
Sent: Tuesday, January 26, 2021 5:19 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: following up on our call

Joe/Tomás:

Ex. 5 Deliberative Process (DP)

But I would encourage you to probe this question at the meeting on Thursday

Thanks,

Chris

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

Message

From: Millett, John [Millett.John@epa.gov]
Sent: 1/28/2021 9:11:17 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
CC: DeLuca, Isabel [DeLuca.Isabel@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; Stevens, Katherine [stevens.katherine@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]
Subject: Climate web page mock-up
Attachments: Climate change website script-FINAL.docx

Ex. 5 Deliberative Process (DP)

Big thanks to Isabel and Kati for their quick and excellent work getting us to this point within a week of the first executive order.

Climate Change

Executive Actions:

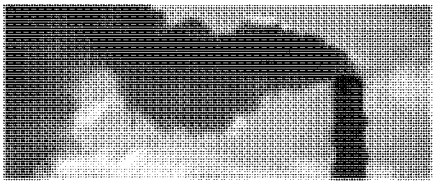
January 27, 2021
The Administration's Climate Crisis Fact Sheet

January 20, 2021
An Executive Order Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis

EPA is currently developing the Climate Change website. Please check back in the coming weeks for new content.

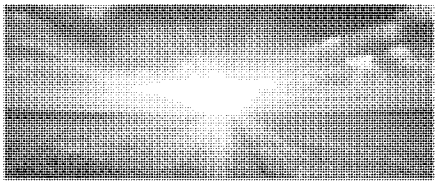
Through regulations and partnerships with businesses, consumers, and state, local, and tribal governments, EPA helps reduce emissions of greenhouse gases that contribute to climate change.

> *The Biden Administration will ensure we meet the demands of science, while empowering American workers and businesses to lead a clean energy revolution. — The White House*



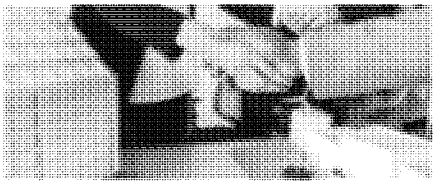
Climate Data, Reports, and Resources

- Greenhouse Gas (GHG) Emissions
- Energy and the Environment
- Energy Resources for State, Local, and Tribal Governments
- Climate Change Indicators
- Climate Change Research



Reducing Emissions and Addressing Impacts

- ENERGY STAR
- Clean Energy Programs
- Climate Change and Transportation
- Climate Change and Water
- Climate Change Adaptation Resource Center



Additional Climate Resources

- The White House
- NASA
- NASA Climate Kids
- NOAA Climate.gov
- CDC
- U.S. Global Change Research Program
- National Academy of Sciences
- Intergovernmental Panel on Climate Change

Contact Us to ask a question, provide feedback, or report a problem.

Message

From: Millett, John [Millett.John@epa.gov]
Sent: 1/25/2021 8:32:19 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Campbell, Ann [Campbell.Ann@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]
Subject: RE: Greeting note - JG Draft
Attachments: OAR arrival note 1-25.docx

Thanks – track changes attached – merged edits from Betsy and Ann into Joe's version– had to cut a couple paragraphs for length and flow.

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Monday, January 25, 2021 10:41 AM
To: Millett, John <Millett.John@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: Greeting note - JG Draft

Message

From: Browne, Cynthia [Browne.Cynthia@epa.gov]
Sent: 1/26/2021 5:46:07 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: Message from Joe Goffman, Acting Assistant Administrator for OAR

Welcome Back, Joe!

Cynthia Browne

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Tuesday, January 26, 2021 10:35 AM
To: OAR-WIDE-EVERYONE <OARWIDEEVERYONE@epa.gov>
Subject: Message from Joe Goffman, Acting Assistant Administrator for OAR

Dear OAR Colleagues –

No one will enjoy a greater honor or privilege than the honor and privilege I now enjoy of returning to your side as your colleague. As some of you may recall, from 2009-2017, I served as OAR's Associate Assistant Administrator for Climate and Senior Counsel, which was the best experience of my career. Happy as I am to occupy a new role, now as OAR's Principal Deputy Assistant Administrator and current Acting Assistant Administrator, simply being back here with you all is what makes this return such a pleasure.

First, I would like to thank you all – and by "all" I mean every single person who works in OAR – for your service to the public and for your ongoing dedication and commitment to the mission of the Office of Air and Radiation and of the Environmental Protection Agency. No matter what your job here is, you have earned, and will continue to earn, the unending gratitude of our fellow Americans for the energy and care you devote to protecting the air we breathe, our health, and our quality of life. Of course, you are not here in quest of "thanks" and I'm pretty sure that when you look in the mirror you don't see a hero, but you're entitled both to the "thanks" and to seeing yourselves that way. You are certainly my heroes – every single one of you.

That's not an exaggeration. This has been a difficult year for our country and the world. Since March, the pandemic has brought hard times, fear, and illness to our communities, friends and families. Many of you may have been touched in some way by the hardships and tragedies this year has brought and we are here as colleagues to support you however we can; virtually everyone has had to cope with challenges none of us imagined having to face a year ago.

From everything I've seen and heard, OAR employees' resilience, ingenuity and perseverance has shone through, and that's a tremendous source of comfort. Maintaining your characteristic commitment to our mission with the utmost professionalism while adapting to these tough times should give us all confidence that we can face the challenges, and harvest the opportunities, 2021 puts in our path and continue to deliver for the American people. After all, the OAR culture I knew when I was here last doubtless will propel us forward again: bringing out the best in each other and understanding that there is no success outside the success we all create and share in together.

In his note to all of us last week, EPA Chief of Staff Dan Utech introduced himself and members of the new leadership team who have arrived so far. He also called our attention to some of President Biden's executive orders. One in particular strikes to the core of our mission at OAR. The Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, says, "it is the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to

the impacts of climate change; … and to prioritize … environmental justice." It's as if President Biden were addressing EPA and OAR directly. Clearly, this is an amazing moment for us at OAR when our work will be even more vital and more highly valued in the coming months and years.

It is also my great pleasure to introduce Tomás Carbonell, who has joined the OAR leadership team as the Deputy Assistant Administrator for Stationary Sources. Tomás comes to EPA from the Environmental Defense Fund, where he was the Senior Counsel and Director of Regulatory Policy for that organization's clean air program. From 2008-2012, Tomás was an Associate at Van Ness Feldman, LLP, where he counseled diverse clients on federal legal and regulatory matters related to climate change, clean energy, and environmental and electricity regulation. He has a J.D. from Yale University, degrees in Environmental Change and Management and Development Economics from the University of Oxford, and bachelors' degrees in Chemical Engineering, Economics, and Multidisciplinary Studies from North Carolina State University. Please join me in welcoming Tomás, and please stay tuned for more introductions in the near future.

Very soon, via "Teams," we will have the chance to talk to and hear from each other directly as we get "all hands" meetings on the calendar with each of your offices. Please think about how you want to use that time to surface your concerns and share your suggestions for the best practices to continue or adopt in our work together going forward. A little later on we will also be engaging with the regions and states, the Office of General Counsel, the Office of Policy and other program offices as well as the public and our stakeholders.

Looking forward to connecting face-to-face

Thank you all very much for being here.

Stay safe and take care of yourselves and each other.

All best,
Joe

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

Jenny K. Harbine
EARTHJUSTICE
313 East Main Street
Bozeman, Montana 59715
(406) 586-9699 | Phone
(406) 586-9695 | Fax
jharbine@earthjustice.org

John Barth
Attorney at Law
P.O. Box 409
Hygiene, Colorado 80533
(303) 774-8868
barthlawoffice@gmail.com

Counsel for Petitioners

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

NATIONAL PARKS CONSERVATION ASSOCIATION, SIERRA CLUB, HEAL UTAH, and UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT Petitioners.	Dkt. No. EPA-R08-OAR-2015-0463 In Re: Approval and Promulgation of Air Quality Implementation Plans; Utah; Regional Haze State and Federal Implementation Plans, 85 Fed. Reg. 75,860 (November 27, 2020)

PETITION FOR RECONSIDERATION OF FINAL RULE

National Parks Conservation Association ("NPCA"), Sierra Club, HEAL Utah, and Utah Physicians for a Healthy Environment (collectively, "Conservation Organizations") petition the U.S. Environmental Protection Agency ("EPA") to reconsider the above-referenced final rule withdrawing the science-based July 5, 2016 Federal Implementation Plan ("FIP") addressing the Clean Air Act's ("CAA") regional haze requirements for Utah. EPA's 2016 FIP imposed Best Available Retrofit Technology ("BART") emission-reduction requirements on four units at the Hunter and Huntington coal-fired power plants in central Utah. The FIP imposed emission

reductions at the Hunter and Huntington plants to reduce significant visibility impacts at some of the nation's most iconic national parks, including Grand Canyon National Park, Zion National Park, Arches National Park, Capitol Reef National Park, and Canyonlands National Park. Emissions from PacifiCorp's Hunter and Huntington power plants cause some of the greatest visibility impacts of any coal-fired power plants in the United States. By requiring BART emission reductions, the FIP would have achieved some of the most significant visibility improvements under the regional haze program nationwide.

After the 2020 election, the lame-duck Trump Administration published a Final Rule on November 27, 2020 ("Trump Final Rule") that withdraws the FIP and replaces it with a State Implementation Plan ("SIP") that does not require ***any new emission reductions*** from the Hunter and Huntington power plants. Instead, the Trump Final Rule would allow Utah and PacifiCorp to rely entirely on historical emission reductions at non-BART facilities. It is notable that the Obama-Biden Administration had previously considered, and rejected, this same SIP as failing to comply with the regional haze requirements of the federal Clean Air Act.

EPA's interpretation of the statutes and rules it administers may be evaluated "on a continuing basis," especially "in response to . . . a change in administrations." *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005); *see also Nat'l Ass'n of Home Builders v. EPA,* 682 F.3d 1032, 1038, 1043 (D.C. Cir. 2012) (a revised rulemaking based "on a reevaluation of which policy would be better in light of the facts" is "well within an agency's discretion," and "'[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations'") (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.,* 463 U.S. 29, 59 (1983) (Rehnquist, J., concurring in part and dissenting in

part)).

Further, because EPA's new data, rationales, and/or interpretations not considered or presented in the Trump proposed rule were disclosed for the first time "after the period for public comment," reconsideration is appropriate under section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B). Accordingly, the Conservation Organizations respectfully request that EPA grant this petition and afford them "the same procedural rights as would have been afforded had the information been available at the time the rule was proposed." *Id.*

We ask that the Biden EPA respond in writing to this Petition stating that it is reconsidering the above-referenced Final Rule. Then, we ask the Biden EPA to promptly issue a proposed rule withdrawing the post-election Trump Final Rule and re-instating the FIP.

I. FACTUAL BACKGROUND

A. The Hunter and Huntington Coal-Fired Power Plants

PacifiCorp's Hunter and Huntington coal plants are two of the largest sources of pollution in the country. According to an NPCA emissions analysis, the three-unit Hunter plant ranks second among all pollution sources in the nation, not just coal plants, in its contribution to haze pollution in national parks, while the Huntington plant ranks eighteenth. These neighboring plants in central Utah are responsible for haze pollution in all of Utah's iconic national parks, including Arches, Canyonlands, Zion, and Capitol Reef, as well as numerous national parks and wilderness areas beyond Utah's borders, including the Grand Canyon. As EPA previously recognized, "**[a]ddressing visibility impairment [caused by Hunter and Huntington] is critical not only to the experience of visitors to these parks, but also to the economic well-being of the local communities near the parks and state-wide**."[1]

[1] *See Utah et al. v. U.S. Envtl. Prot. Agency et al.*, No. 16-9541, Respondents' Opp. to the Mots. to Stay Final Rule, at 1 (10th Cir. Dec. 16, 2016).

In addition to haze-causing nitrogen oxide and sulfur dioxide pollution, the Hunter and Huntington plants are significant sources of climate pollution, together emitting nearly 15 million tons of carbon dioxide in 2019 – equivalent to the average annual emissions of approximately 3 million passenger vehicles.

B. Regional Haze Compliance for the Hunter and Huntington Coal Plants

To meet its obligations under the Clean Air Act's regional haze program, EPA previously identified best available retrofit technology ("BART") for Hunter Units 1 and 2 and Huntington Units 1 and 2—selective catalytic reduction ("SCR") technology that is in place at coal-fired power plants across the country to control emissions of nitrogen oxide (NOx). EPA adopted a FIP requiring PacifiCorp to achieve NOx emissions rates from Hunter Units 1 and 2 and Huntington Units 1 and 2 consistent with the operation of SCR and established a compliance deadline of August 2021.[2] The modern emissions controls required by EPA's FIP would improve visibility in Utah's beloved national parks and numerous parks and wilderness areas beyond the State's borders. Additionally, because the same pollutants that cause regional haze also harm human health, compliance with EPA's FIP would have the significant additional benefit of making Utah's air healthier to breathe.

At the same time the Obama-Biden EPA adopted a FIP, it rejected Utah's proposed alternative to BART controls. Utah's BART alternative would allow the state to take credit for emission reductions that were needed to comply with separate Clean Air Act programs that are entirely *historical* reductions of NOx and sulfur dioxide ("SO2") at other non-BART coal units to justify its refusal to meet BART requirements that would achieve necessary NOx emission reductions at Hunter and Huntington Units 1 and 2.

[2] Final Rule, Utah Regional Haze, 81 Fed. Reg. 43,894 (July 5, 2016).

Specifically, the BART alternative would rely on: 1) sulfur dioxide (SO2), NOx, and particulate matter emission reductions from the 2015 closure of PacifiCorp's 60-year old Carbon coal plant; and 2) NOx reductions achieved through combustion control upgrades at Hunter Units 1, 2 and 3 and Huntington Units 1 and 2, which were installed in 2006–2014.).[3] The BART alternative would require no new emissions reductions from any source. Although Congress mandated pollution reductions "as expeditiously as practicable" for plants like Hunter Units 1 and 2 and Huntington Units 1 and 2, 42 U.S.C. § 7491(b)(2), Utah's BART alternative would allow these units to continue polluting at current levels indefinitely.

In September 2016, PacifiCorp and the State of Utah challenged EPA's FIP and rejection of the Utah BART alternative, immediately moving for a stay of PacifiCorp's compliance obligations under the FIP.[4] EPA initially defended its FIP, filing a brief that vigorously opposed the requested stay on December 16, 2016. However, on March 23, 2017, EPA notified the court that "EPA intends to pursue alternatives to litigation with the parties." And, on July 14, 2017, EPA sent a letter to the State of Utah stating that EPA would reconsider its FIP and the Utah BART alternative.

On November 27, 2020, the Trump EPA finalized its roll-back of the 2016 FIP and adopted Utah's BART alternative.[5]

The Conservation Organizations urge EPA to revisit this decision to require PacifiCorp to adopt the same, common-sense pollution controls for Hunter Units 1 and 2 and Huntington Units 1 and 2 that have been required—and installed—at other coal plants across the country. To

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[3] Final Rule, Utah, Regional Haze State and Federal Implementation Plans, 85 Fed. Reg. 75,860 (Nov. 27, 2020) ("Trump Final Rule")

[4] *See State of Utah, et al. v. U.S. Envtl. Protection Agency et al.*, No. 16-9541 (10th Cir., filed Sept. 1, 2016).

[5] Trump Final Rule, 85 Fed. Reg. at 75,860.

achieve mandatory compliance with the CAA's regional haze requirements for Utah, the Conservation Organization's urge EPA to expeditiously grant this petition for reconsideration.

II. EPA HAS AUTHORITY TO RECONSIDER TRUMP'S POST-ELECTION FINAL RULE

A. EPA has Inherent Authority to Reconsider Trump's Post-Election Final Rule

Federal agencies have authority to reconsider past decisions and to revise, replace or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). Changes in policy or agency interpretations are also recognized as legitimate bases for reconsideration. *See Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981-82 (2005); *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012).

An administrative agency has the inherent power to reconsider its own rule. *Trujillo v. Gen. Elec. Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980). The Tenth Circuit and other courts have held that administrative agencies "have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider." *Id*; *see also Gun South, Inc. v. Brady*, 877 F.2d 858, 862 (11th Cir. 1989); *United Gas Imp. Co. v. Callery Properties, Inc.*, 382 U.S. 223, 229 (1965) ("An agency, like a court, can undo what is wrongfully done by virtue of its order."); *See Macktal v. Chao*, 286 F.3d 822, 825-26 (5th Cir. 2002) (finding that "in the absence of a specific statutory limitation, an administrative agency has the inherent authority to reconsider its decisions"); *New Jersey v. EPA*, 517 F.3d 574, 583 (DC Cir. 2008) (finding EPA has inherent authority to reconsider its rules, but that express statutory language limited EPA's ability to reconsider the HAPs list once a category was added by rulemaking).

More specifically, an agency has broad latitude to reconsider a decision as long as its action is reasonable, complies with the governing statute, and is not done in bad faith. *SKF USA Inc. v. United States,* 254 F.3d 1022, 1029 (Fed. Cir. 2001). A discretionary change in an agency policy or statutory interpretation is legitimate grounds for administrative reconsideration. *Id.* Similarly, newly discovered information can justify administrative reconsideration. *Rutherford v. United States*, 806 F.2d 1455, 1460 (10th Cir. 1986). As the Federal Circuit Court of Appeals explained:

> [T]he agency may request a remand (without confessing error) in order to reconsider its previous position. It might argue, for example, that it wished to consider further the governing statute, or the procedures that were followed. It might simply state that it had doubts about the correctness of its decision or that decision's relationship to the agency's other policies.

SKF USA, 254 F.3d at 1029. Thus, EPA's interpretation of the statutes and rules it administers are not "carved in stone" and may be evaluated "on a continuing basis," especially "in response to … a change in administrations." *Nat'l Cable & Telecomm. Ass'n*, 545 U.S. at 981; *see also Nat'l Ass'n of Home Builders*, 682 F.3d at 1038, 1043 (a revised rulemaking based "on a reevaluation of which policy would be better in light of the facts" is "well within an agency's discretion," and "'[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations'") (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part)).

Finally, the Administrative Procedure Act ("APA") further corroborates the principal that an agency has inherent authority to reconsider. APA section 553(e) grants any "interested person" the right "to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C.§ 553(e). An agency must have the inherent right to reconsider before it could grant such a right to

another party.

B. Reconsideration of Trump's Post-Election Final Rule is Consistent with Past EPA Actions

EPA has exercised its inherent authority to reconsider SIPs and FIPs in the past. In fact, the Trump EPA reconsidered the 2016 FIP imposing emission reductions at the Hunter and Huntington coal plant units under BART in the Final Rule at issue in this Petition for Reconsideration.[6] EPA previously explained in 2011 that it had inherent authority to reconsider and revise its 1992 approval of a Texas SIP and to impose a FIP covering parts of the SIP it was reconsidering.[7] In that action, EPA cited broad support for its inherent authority to reconsider and revise a SIP, ranging from CAA authority under sections 110(k), 301(a), and 307, to APA section 553(e), case law, and previous EPA actions to reconsider SIPs.[8] As EPA explained, "The provisions in CAA section 110 that authorize EPA to take action on a SIP revision inherently authorize EPA to, on its own initiative, reconsider and revise that action as appropriate."[9]

Similarly, in 2010, EPA relied on its inherent authority to withdraw and narrow its prior approval of numerous state SIPs with provisions related to greenhouse gas regulations.[10] Because EPA determined that the previously approved SIP provisions conflicted with new regulations, EPA relied on its inherent authority to withdraw its prior approval of certain parts of those SIPs and to reconsider its own actions.[11] EPA articulated a broad interpretation of CAA section 110(k)(6) that included the power to partially withdraw approval of a SIP when new considerations led EPA to believe that part of the rule was in error.[12]

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[6] *See* Trump Final Rule, 85 Fed. Reg. 75,860.
[7] 76 Fed. Reg. 25,178 (May 3, 2011).
[8] *Id.*
[9] *Id.* at 25,181 (citing *Gun South* and *Trujillo*).
[10] 75 Fed. Reg. 82,536 (Dec. 30, 2010).
[11] *Id.* at 82,543.
[12] *Id.* at 82,546-47.

C. The Clean Air Act Explicitly Authorizes EPA to Reconsider the Trump Final Rule Based on New Information

Beyond differing interpretations and corrections of error, the CAA requires EPA to reconsider its action on a SIP or FIP if it receives new objections to EPA's action "of central relevance to the outcome of the rule," when it was "impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review)."[13] This petition is timely as it is filed within 60 days after EPA's promulgation of the final rule on November 27, 2020. Accordingly, this petition satisfies the requisite elements warranting reconsideration of the final rule.[14]

III. EPA SHOULD EXERCISE ITS INHERENT AND EXPRESS AUTHORITY UNDER THE CLEAN AIR ACT TO RECONSIDER THE TRUMP FINAL RULE

EPA should grant the Conservation Organizations' Petition for Reconsideration to ensure that it complies with the Clean Air Act's regional haze requirements to achieve mandated pollution reductions "as expeditiously as practicable" for plants like Hunter Units 1 and 2 and Huntington Units 1 and 2, 42 U.S.C. § 7491(b)(2), and to align the agency's actions with the environmental priorities of the Biden Administration. Specifically, EPA should grant reconsideration to: 1) revise an illogical interpretation of the Regional Haze Rule that would allow states to substitute the inevitable end-of-life retirement of an aging facility for forward-looking emissions reductions mandated by the regional haze program;[15] 2) evaluate new information that rebuts EPA's explanation for disregarding evidence that Hunter and Huntington's emissions are highest in the wintertime, when Class I-area visibility impairment is greatest, where such evidence refutes EPA's finding that Utah's BART alternative is superior to

[13] 42 U.S.C. § 7607(d)(7)(B).
[14] *Id.*
[15] *Infra.* Pt. III.A.

BART;[16] 3) consider new information that pre-baseline emissions reductions from Hunter Unit 3 may not be included in the Utah BART Alternative;[17] 4) align its action on Utah Regional Haze with its recent determination for Wyoming of NOx emissions rates achievable through BART;[18] and 5) ensure that its action on Utah Regional Haze does not violate the Clean Air Act's prohibition against backsliding, 42 U.S.C. § 7410(*l*).[19, 20]

A. EPA Should Reconsider its Interpretation of the CAA That Would Allow States to Evade Compliance with the Regional Haze Program's Pollution-Reduction Requirements Based on End-of-Life Closures of Aging Non-BART Units

EPA's acceptance in the Trump Final Rule of historical emissions reductions from the planned retirement of a 1950's-era coal plant is contrary to the letter and spirit of the CAA Regional Haze program and should be reconsidered. PacifiCorp permanently shut down the Carbon plant in 2015 due to the high cost and infeasibility of controlling mercury emissions to meet the requirements of EPA's Mercury and Air Toxics Standards ("MATS").[21] The Trump Final Rule asserts that Utah's BART alternative properly takes credits for the emissions reductions achieved from closure of the Carbon plant because they occurred after the 2002 baseline date of the SIP to comply with a CAA requirement other than regional haze.[22] This was unreasonable.

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[16] *Infra*, Pt. III.B.
[17] *Infra*, Pt. III.C.
[18] *Infra*, Pt. III.D.
[19] *Infra*, Pt. III.E.
[20] The Conservation Organizations' arguments for reconsideration identify flaws in the Trump Final Rule that are in addition to those flaws in EPA's Utah regional haze compliance raised by the Conservation Organizations' March 2020 comments on the proposed rule. While the Conservation Organizations believe that EPA can and should redress these flaws through reconsideration of the Trump Final Rule, they are filing a petition for review of the rule in the Tenth Circuit Court of Appeals to preserve their right to litigate these issues.
[21] Trump Final Rule, 85 Fed. Reg. at 75,860.
[22] *Id.* at 75,862.

EPA should reconsider its 2020 finding that Utah may take credit for emissions reductions due to the shutdown of the Carbon coal plant. In responses to comments on the 2016 proposed FIP, EPA did not resolve the question of whether a BART alternative could be based on emissions reductions achieved through the retirement of a non-BART plant because EPA rejected Utah's BART alternative on other grounds.[23] However, in expressly declining to resolve this question, EPA noted "that a state must take a reasonable approach to assessing whether a BART alternative will provide for greater reasonable progress than BART."[24]

Contrary to the agency's own 2016 admonition, EPA's 2020 "greater reasonable progress" finding for the Utah BART alternative does not reflect a "reasonable approach." *Id.* EPA accepted PacifiCorp's visibility modeling assumptions for the BART alternative scenario that the Carbon coal plant would have zero emissions, and for the BART scenario, that Carbon Units 1 and 2 will continue to operate until at least 2025—when the plant would be nearly 70 years old—at 2003 emissions levels. However, there is nothing reasonable about assuming that the Carbon coal plant would be operational in 2025, when it in fact shut down in 2015. On the contrary, it is well-understood that coal plants have a limited operational lifespan. Globally, coal plants have an average lifespan of 46 years, and only a handful of coal plants built before 1960 are still in operation.[25] According to the U.S. Energy Information Administration, the average age of U.S. coal units that retired in 2015 was 56 years—less than the Carbon Plant.[26] In 2018,

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[23] Docket No. EPA-R08-OAR-2015-0463, Response to Comments 168 (June 1, 2016), at https://www.regulations.gov/document?D=EPA-R08-OAR-2015-0463-0208.
[24] *Id.*
[25] R. Cui et al., Quantifying operational lifetimes for coal power plants under the Paris goals, Fig. 3b (Oct. 18, 2019), at https://www.nature.com/articles/s41467-019-12618-3
[26] *See* EIA, More U.S. coal-fired power plants are decommissioning as retirements continue (July 26, 2019), at https://www.eia.gov/todayinenergy/detail.php?id=40212.

the average age of retiring coal plants in the U.S. was 46 years.[27] In other words, at around 60 years old in 2015, the Carbon Plant was at the end of its life. Moreover, the emissions reductions (or elimination of emissions) from the Carbon Plant starting in 2015 were not achieved to comply with a CAA requirement. Instead, they were achieved to *avoid* such compliance, because PacifiCorp determined it was not worth the investment on an aging plant to meet the new Mercury and Air Toxics Standards ("MATS") emissions rates. *See* Proposed Rule, 85 Fed. Reg. at 3,565 (noting that PacifiCorp elected to shut down the Carbon Plant "due to the high cost to control mercury to meet the requirements of EPA's [MATS]").

An economic decision to retire an end-of-life non-BART coal plant is not a legitimate basis for exempting ongoing, large sources of pollution from BART requirements. Although the Trump Final Rule cited numerous examples in which EPA approved BART alternatives based on emissions controls adopted to comply with CAA requirements other than regional haze, it identified no example—and the Conservation Organizations are aware of none—in which it exempted sources from BART compliance due to economic decision to close a non-BART plant.[28] Like most coal plants of its generation, the Carbon Plant was due to retire in 2015. Notably, Congress did not target these aged units for BART upgrades. Instead, it targeted a newer set of plants that Congress determined would continue to bear primary responsibility for the regional haze problem.[29] The need to remedy haze-causing pollution from these sources was "a major concern motivating the adoption of the [CAA's] visibility provisions."[30] Thus,

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[27] *Id.*
[28] Trump Final Rule, 85 Fed. Reg. at 75,862.
[29] 42 U.S.C. § 7491(b)(2) (requiring BART for major stationary sources of haze pollution that began operating between 1962 and 1977 and cause or contribute to visibility impairment in Class I areas).
[30] 1999 Regional Haze Rule, 64 Fed. Reg. at 35,737 (quoting H.R. Rep. No. 564, 95th Cong., 1st Sess. at 155 (1977)

adequate emissions controls on sources subject to BART, including Hunter and Huntington, are an essential component of meeting the visibility goal of the Regional Haze Program. In lieu of such controls, EPA previously has accepted alternative approaches that reduce emissions from BART and non-BART units that will continue to operate or retire units that might have otherwise continued polluting.[31] But before the Trump Final Rule, EPA had not accepted the retirement of a 60-year-old uneconomic coal plant in lieu of ongoing future emissions reductions.

EPA should reconsider the novel decision to substitute an end-of-life, non-BART plant retirement for future emissions reductions. Indeed, under the sensible scheme established by the CAA, such retirements *combined with* effective pollution controls on relatively newer BART units are essential to achieving the statutory purpose of the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas … from manmade air pollution."[32] In contrast with this statutory requirement, the Trump Final Rule fails to achieve any emissions reductions, and as a result, fails to achieve visibility improvement the statutory scheme requires. EPA should reconsider this illogical and unlawful result. *Nat'l Cable & Telecomm. Ass'n*, 545 U.S. at 981 (agency may reconsider policy and legal interpretations, particularly following "a change in administrations").

B. EPA Should Reconsider the Trump Final Rule to Consider New Information Regarding the Seasonality of Visibility-Impairing Pollution

Reconsideration of the Trump Final Rule is also appropriate because evidence regarding greater winter season emissions relative to spring and fall emissions undermines the basis for

[31] *See* Trump Final Rule, 85 Fed. Reg. at 75,862.
[32] 42 U.S.C. § 7491(a)(1); *see also id.* § 7491(b)(2)(A) (specifically requiring BART on certain sources to eliminate or reduce their contribution to visibility impairment).

EPA's determination in the Trump Final Rule that Utah's BART alternative achieves greater reasonable progress than BART on Hunter Units 1 and 2 and Huntington Units 1 and 2.[33]

EPA has not meaningfully addressed the impact of Hunter and Huntington's relatively higher wintertime NOx emissions, as compared against PacifiCorp's modeled emissions, which very likely negates EPA's finding that Utah's BART alternative would achieve greater reasonable progress than future reductions of coal plant emissions through BART. The Conservation Organizations' comments on the 2020 proposed rule noted drastic changes in the utility industry experienced at coal plants across the country—including Hunter and Huntington—that have changed seasonal emissions profiles, increasing the dominance of wintertime emissions. The Trump Final Rule relies on PacifiCorp's CAMx modeling based on the daily emissions profile which existed between 2001 to 2012, when coal plant emissions were relatively constant year-round. However, as the Conservation Organizations observed in their comments on EPA's proposed rule, the Hunter and Huntington coal plants are currently experiencing strong seasonality in heat input and NOx emissions in recent years (2018-2019), with prominent peaks in the summer and winter. Thus, although PacifiCorp's CAMx modeling simulation purported to represent future 2025 emission levels, the modeling reflected an outdated assumption that Hunter and Huntington emissions are evenly spread throughout the year. Instead, the 2018-19 average emissions accurately represent expected future 2025 Hunter/Huntington NOx emissions in the absence of BART controls.

The higher wintertime NOx emissions that would occur under the proposed Utah SIP are important in this case because the colder average temperatures occurring in the winter would

[33] *See Trujillo,* 621 F.2d at 1086 (affirming agencies' inherent right to reconsider their decisions).

tend to generate an increased contribution of nitrates to visibility impairment. By underestimating wintertime NOx emissions in the CAMx modeling, the associated nitrate contribution to visibility impairment would also be underestimated. An accurate evaluation of the effectiveness of any future emissions control strategy requires that the CAMx modeling of each emissions control alternative be an accurate representation of the expected emissions, including any known seasonality. The current CAMx modeling that supports the Utah emissions control alternative lacks any significant seasonality in the future case Hunter/Huntington emissions and as does not accurately represent the known increase in wintertime emissions which is reflected in the current actual emissions data. The recent actual emissions data at Hunter/Huntington demonstrate that the CAMx modeling supporting the proposed Utah SIP alternative underestimates expected future wintertime NOx emissions and as such, does not produce reliable modeling results regarding the expected future visibility impacts of the subject facilities. Further, because wintertime visibility impairment contributes significantly to the 20% worst days, accurate assumptions about wintertime emissions in the modeling of both the BART benchmark scenario and the BART alternative would very likely reverse the result of EPA's "greater reasonable progress" determination.

In the Trump Final Rule and response to comments, EPA asserted that PacifiCorp's modeling did not misrepresent seasonal emissions because the modeled emissions reflected higher seasonal average emissions than have actually occurred in recent years. *But this is false.* As shown in Table 1, for three of the five coal plant units modeled (Hunter Units 2 and 3 and Huntington Unit 1), actual wintertime NOx emissions in 2018-19 exceeded the CAMx model inputs for the BART alternative, and the total daily wintertime NOx emissions for all units in 2018-19 were 2.63 tons greater than those modeled.

Table 1. Utah SIP CAMx Modeling vs Average 18-19 Emissions Nitrogen Oxides (NOx) – tons per day

	CAMx Model Inputs[a]	2018-19 Winter Average
Hunter 1	8.67	8.49
Hunter 2	8.30	8.98
Hunter 3	12.30	14.40
Huntington 1	8.62	9.14
Huntington 2	9.22	8.73
TOTAL – All Plants	47.11	49.74

[a] CAMx Model Input emissions were calculated using data presented in the CAMx Modeling Report Table 2-5, except that ton/year values were divided by 365 to change the emission units to tons/day.

In other words, PacifiCorp's CAMx modeling *did* misrepresent future case seasonal emissions, which prejudiced the result of the "greater reasonable progress" determination. This warrants reconsideration.[34]

The Trump Final Rule additionally stated that it was appropriate to omit consideration of 2018 and 2019 emissions data because they were not available when the CAMx modeling was performed. However, in considering whether emissions controls are necessary to satisfy the Clean Air Act's requirement to address future visibility impairment, reliance on stale emissions data that does not reflect current reality is no defense. Certainly, the availability of data now is reason for EPA to reconsider the 2020 Trump Final Rule.[35]

Moreover, although 2020 data was not available at the time of the Conservation Organizations' comments, 2020 data now confirm this trend, as shown in the following table.[36] Note that the trend is less pronounced during 2020 than 2018 or 2019, however even with the

[34] *See SKF USA*, 254 F.3d at 1029 (agency reconsideration appropriate when agency "had doubts about the correctness of its decision").
[35] *Trujillo,* 621 F.2d at 1086; 42 U.S.C. § 7407(d)(7)(B).
[36] *See* 42 U.S.C. § 7407(d)(7)(B) (providing express authority for EPA to reconsider actions based on information unavailable during comment period on proposed rule).

COVID-related commercial disruption and stay-at-home orders in effect through much of 2020, available data show higher wintertime coal-plant emissions than in other seasons.

Table 2. Changes in Daily NOx Seasonal Emissions (tons/day) in 2001-2003 compared to current (2018-2020)

Plant	Hunter 1	Hunter 2	Hunter 3	Huntington 1[a]	Huntington 2[a]
01-03 Winter Daily Avg NOx	20.54	18.58	19.26	17.91	16.81
18-20 Winter Daily Avg NOx	8.40	8.79	13.29	8.74	7.94
01-03 Spring Daily Avg NOx	20.77	18.96	18.20	17.97	17.84
18-20 Spring Daily Avg NOx	7.38	7.40	8.64	5.81	4.78
01-03 Summer Daily Avg NOx	20.81	18.44	18.97	16.40	17.42
18-20 Summer Daily Avg NOx	8.94	9.04	11.35	7.12	7.39
01-03 Fall Daily Avg NOx	18.38	18.76	19.79	17.43	17.45
18-20 Fall Daily Avg NOx	8.88	8.95	12.83	9.04	8.21

[a] These averages do not include the months of October, November, or December 2020, which have not yet been reported to EPA's Air Markets Program Database (last checked January 21, 2020).

EPA should grant this petition to reconsider the effect of wintertime peak emissions on its determination whether Utah's BART alternative would achieve greater reasonable progress than would BART.

C. EPA Should Reconsider the Trump Final Rule to Account for New Information that the BART Alternative Unlawfully Includes Pre-Baseline Emissions Reductions

Reconsideration also is warranted to reassess whether past emissions reductions from Hunter Unit 3 are improperly credited to the BART alternative, where new information demonstrates that such reductions were required prior to the 2002 baseline date of the SIP.[37] As discussed above and acknowledged by EPA, any BART alternative may rely *only* on emission reductions that are "surplus to those reductions resulting from measures adopted to meet

[37] 42 U.S.C. § 7607(d)(7)(B) (providing for reconsideration based on new information).

requirements of the CAA as of the baseline date of the SIP."[38] EPA asserted in the Trump Final Rule that Utah's BART alternative properly takes credit for NOx controls on Hunter Unit 3 because they were installed in 2007, after to 2002 SIP baseline date.[39] As discussed below, however, recent developments call this determination into serious question.

As discussed in the Conservation Organizations' comments on the proposed rule, the NOx emission reductions that occurred at Hunter Unit 3 in 2007 and the SO2 and NOx reductions that occurred at Hunter Unit 2 in 2011 were required under regulations established under the Clean Air Act and the Utah SIP before the 2002 regional haze baseline date.[40] Specifically, in 2016, Sierra Club petitioned EPA to object to the Title V permit issued for the Hunter Power Plant in part because it failed to include prevention of significant deterioration (PSD) permitting requirements including best available control technology (BACT) for major modifications to each Hunter unit conducted in 1997-1999.[41] Sierra Club's Title V petition asks EPA to object to the Hunter Title V Permit because it fails to include applicable PSD permitting requirements including BACT for NOx, SO2, and PM for the major modification projects constructed at Hunter Units 1, 2, and 3 in 1997-1999.[42] These PSD requirements are requirements that were adopted and in the Utah SIP as of the baseline date of the regional haze SIP[43] and that should have been complied with in 1997-1999, well before the 2002 baseline date of the regional haze SIP. In 2017, EPA denied Sierra Club's petition, finding that Utah's 1997

[38] Proposed Rule, 85 Fed. Reg. at 3,561 (citing 40 C.F.R. § 51.308(e)(2)(iii), (iv)).
[39] Trump Final Rule, 85 Fed. Reg. at 75,862.
[40] Mar. 20, 2020 Comments from Conservation Organizations at 10-11.
[41] April 11, 2016 Sierra Club Petition to EPA for Objection to PacifiCorp Hunter Power Plant Title V Operating Permit No. 1500101002.
[42] April 11, 2016 Sierra Club Petition to EPA for Objection to PacifiCorp Hunter Power Plant Title V Operating Permit No. 1500101002 at 16.
[43] *Id.* at 10-11.

permit (i.e., "Approval Order") approving the projects as minor modifications essentially defined the "applicable requirements" for those projects.[44]

Sierra Club appealed that EPA order to the 10th Circuit Court of Appeals. The court granted Sierra Club's appeal on July 2, 2020, after the close of the comment period on EPA's January 2020 proposed rulemaking on Utah's BART alternative.[45] The Court held that EPA's order conflicted with the definition of "applicable requirements" in 40 CFR Part 70 (specifically finding that a Title V permit must include all requirements in the state implementation plan, including Utah's requirement for major New Source Review). The Court concluded that EPA's reasoning for denying Sierra Club's petition that the Hunter Title V permit failed to include applicable PSD requirements conflicted with Title V operating permit regulations, and the Court remanded the Sierra Club petition to object back to EPA for further consideration.

On January 13, 2021, EPA responded to the remand and reopened the Hunter Title V permit for cause. Specifically, EPA "direct[ed] UDAQ to reopen the 2020 Permit to evaluate whether the 1997-1999 projects at the PacifiCorp-Hunter facility should have triggered PSD under the EPA-approved SIP rules applicable at that time, and, consequently, to determine whether any PSD-related 'applicable requirements' must be included in the facility title V permit."[46] Utah has ninety days to respond to EPA's Order.[47] As of the date of this petition and

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[44] Oct. 16, 2017 Order Responding to Petition Requesting Objection to the Issuance of a Title V Operating Permit, Petition No. VIII-2016-4, at 8-21.
[45] *Sierra Club v. U.S. Envtl. Protection Agency*, 964 F.3d 882 (10th Cir. 2020).
[46] Jan. 13, 2021 Order Responding Petitions Requesting Objection to the Issuance of Title V Operating Permits, Petition Nos. VIII-2016-4 & VIII-2020-10, at 16. Note that EPA denied the 2016 petition for reasons unrelated to whether the 1997-1999 projects should have been permitted under PSD, but then reopened for cause the current Title V permit issued in 2020 to address whether the 1997-1999 Hunter projects should have triggered PSD. *Id.* at 1.
[47] *Id.* at 6; 40 C.F.R. §70.7(f)(2). EPA may, under certain circumstances, extend the time for a response by another 90 days.

to the Conservation Organizations' knowledge, Utah has not responded to EPA's order to reopen the Hunter Title V permit for cause. The outcome of these proceedings will determine whether the Hunter Unit 3 emissions reductions may properly be included in the BART alternative or whether, as the Conservation Organizations contend, these emissions reductions were mandated by pre-baseline CAA requirements and must be excluded from the BART alternative.

EPA acknowledged in its 2016 Response to Comments that "uncertainty regarding the issues raised in the petition for the Hunter plant that was filed with EPA's Administrator … places additional uncertainty on whether the State's BART Alternative is better than BART."[48] Having recognized the "central relevance" of this issue to the outcome of the Trump Final Rule, EPA should now reconsider that rule given new information based on the court's order.[49] Until these issues are resolved for these 1997-1999 modifications, EPA cannot consider the emission reductions occurring at Hunter 3 or at Hunter Unit 2 as creditable in Utah's BART alternative.[50] For the same reasons, EPA cannot consider NOx and SO2 emission reductions that occurred at Hunter Unit 1 in 2014 as creditable in the BART alternative. Giving credit for such emission reductions, which should have been required to meet BACT for PSD requirements that were triggered prior to the 2002 regional haze baseline, contradicts the limitations of 40 CFR

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[48] Docket No. EPA-R08-OAR-2015-0463, Response to Comments, at 174 (June 1, 2016), at https://www.regulations.gov/document?D=EPA-R08-OAR-2015-0463-0208.

[49] 42 U.S.C. § 7607(d)(7)(B).

[50] To the extent that EPA questions whether the pollution control upgrades and emission reductions that have occurred to date at the Hunter units met or went beyond BACT-level controls, note that PacifiCorp contended that the Sierra Club did not have standing to bring suit against EPA for its Title V order regarding the 1997-1999 modifications because the "Hunter Plant has already reduced its emissions since 1997." However, the 10th Circuit Court decision found that Sierra Club met the requirement of redressability to show standing, stating that "[n]one of the respondents argue that the plant currently uses the best available control technology." The respondents included both the Utah Division of Air Quality and PacifiCorp Energy.

51.308(e)(2)(iii) and (iv) that emission reductions in a BART alternative must be surplus to reductions resulting from measures adopted to meet requirements of the Clean Air Act as of the 2002 regional haze baseline date.

D. EPA Should Reconsider the Trump Final Rule Based on New Information Regarding the Ability of PacifiCorp to Achieve Lower Emissions with BART

EPA should further reconsider the Trump Final Rule's reliance on erroneous and outdated emissions rates achievable through BART, where new information confirms that lower rates are achievable. The Conservation Organizations commented on EPA's January 2020 proposed rulemaking that PacifiCorp's modeling of visibility benefits achievable with BART relied on obsolete emissions information and that the EPA should not have assumed a controlled annual average NOx rate any higher than 0.04 lb/MMBtu for the Hunter and Huntington Units in BART modeling.[51] Specifically, Conservation Organizations pointed out that EPA recently approved a BART alterative for the Laramie River Station in Wyoming based on its finding that installation and operation of SCR could achieve a NOx BART emission rate of 0.04 lb/MMBtu on an annual average basis and a 0.06 lb/MMBtu 30-day average NOx emissions limit.[52] The Conservation Organizations also showed that a 0.04 lb/MMBtu annual average NOx emission rate reflects only 74-80% NOx removal efficiencies across the SCR from current annual average NOx emission rates at the Hunter and Huntington units, which should be readily achievable given that SCR systems are routinely designed to achieve 90% NOx removal according to EPA's Control Cost Manual. Thus, Conservation Organization commented that EPA should not judge the Utah BART alternative in 2020 against a BART benchmark annual average rate of 0.05

[51] *See* Trump Final Rule, 85 Fed. Reg. at 75,867 (summarizing comment).
[52] *See* 83 Fed. Reg. 51,403, 51,408 (Oct. 11, 2018).

lb/MMBtu (and associated 30-day average emissions limit of 0.07 lb/MMBtu) that was based on obsolete emissions information.

In its response to these comments, EPA provided new data to show that NOx emission rates as low as 0.04 lb/MMBtu were only achieved infrequently with SCR installation at coal-fired EGUs.[53] Specifically, EPA states

> …while the commenters cite actual annual emission rates found in the EPA's Air Markets Program Database (AMPD) to support their claim that an annual emission rate of 0.04 lb/MMBtu is achievable with SCR, a more thorough review of the data supports the EPA's conclusion that an annual emission rate no lower than 0.05 lb/MMBtu is representative of what can be achieved when retrofitting SCR to an existing boiler.

Trump Final Rule, 85 Fed. Reg. at 75,868. EPA provided a summary of its review to show that "…of the 155 coal-fired EGUs equipped with SCR operating in 2019 with actual annual emission rates below 0.10 lb/MMBtu, 135 (87.1%) had actual annual emissions greater than 0.05 lb/MMBtu, 18 (11.6%) had actual annual emissions greater than 0.04 lb/MMBtu and less than or equal to 0.05 lb/MMBtu, and only 2 (1.3%) had actual annual emissions less than or equal 0.04 lb/MMBtu."[54] EPA also included new information in the docket at Docket ID EPA-R08-OAR-2015-0463-1157, that has 2019 annual average NOx emission rates for 260 electrical generating units with SCR and has an analysis of the number of unit emitting less than 0.10 lb/MMBtu (which showed percent of such units emitting at certain rates). EPA relied on this data for evaluating the adequacy of its BART benchmark, but the public had no opportunity to review or comment on this data.

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[53] *See* Trump Final Rule, 85 Fed. Reg. at 75,868; *see also* Docket ID EPA-R08-OAR-2015-0463-1157.

[54] Trump Final Rule, 85 Fed. Reg. at 75,868.

While the Trump Final Rule suggested that this new data dispositively demonstrates that modeled emission rates for the BART benchmark were appropriate, EPA should now reconsider this determination to address important questions that call the conclusion into question and to allow the public a formal opportunity to comment on the same. Among other things, EPA's response cited only one year of data. Additionally, EPA failed to acknowledge that such data derives from units very likely subject to less-stringent NOx limits and thus lacked any motivation to achieve feasible lower emission rates. As EPA separately acknowledged in adopting the Laramie River Station BART alternative, such lower rates are achievable, but may require additional costs or a larger SCR to reliable meet.[55] Thus, the actual NOx rates of all coal-fired power plants with SCR do not define what is currently achievable under BART with SCR.

In the Trump Final Rule, EPA also appeared to have made a change in policy that contradicts the published BART guidelines in 40 C.F.R. Part 51, Appendix W, in stating the following:

> After a technology is determined as BART, the BART Guidelines require establishment of an emission limit that reflects the BART requirements, but does not specify that the emission limit must represent the maximum level of control achieved by the technology selected as BART.

Trump Final Rule, 85 Fed. Reg. at 75,867. This is inconsistent with the BART Guidelines. In the BART Guidelines, under Step 3, there is a question "How do I evaluate control techniques with a wide range of emission performance levels?" EPA acknowledged that many control techniques can perform at a wide range of performance levels and that, while one does not need to evaluate all performance levels, "[i]t is <u>important…in analyzing the technology that you take</u>

[55] Final Rule, Wyoming Regional Haze SIP Revision, 84 Fed. Reg. 22,711, 22,716 (May 20, 2019) (noting that Basin Electric would "incur additional costs" to achieve 0.06 lb/MMBtu (30-day) limit, reflecting an actual emission rate of 0.04 lb/MMBtu plus a compliance margin).

into account the most stringent emission control level that the technology is capable of achieving."[56] EPA's statement in the Trump Final Rule is inconsistent with this requirement in the BART Guidelines. The public should have an opportunity to comment on this contradiction in BART policy and on the new emissions data that EPA included in the record to justify its BART benchmark. We also specifically call on the Biden EPA to reconsider and expressly rescind the change in policy identified above.

A proper determination of the BART benchmark is imperative to justify EPA's approval of any alternative to BART. EPA stated the following about this requirement in its January 22, 2020 proposed rule:

> In order to demonstrate that the [BART] alternative program achieves greater reasonable progress than source-specific BART, a state, or the EPA if developing a FIP, must demonstrate that its SIP meets the requirements, as applicable, in 40 CFR 51.308(e)(2)(i) through (vi). Among other things, the state or the EPA must conduct an analysis of the best system of continuous emission control technology available and the associated emission reductions achievable for each source subject to BART covered by the alternative program, termed a ''BART benchmark.''

Proposed Rule, 85 Fed. Reg. at 3,560-61. Thus, a proper review and ability to comment on the new information that EPA added to the record after the public comment period to justify its BART benchmark, which is directly related to whether Utah's BART alternative may lawfully substitute for BART.

EPA should reconsider the Trump Final Rule and require that visibility modeling for purposes of demonstrating greater reasonable progress of a BART alternative must utilize the demonstrably achievable emission rate of 0.04 lb/MMBtu as reflective of BART.

E. EPA Should Reconsider its Determination that the BART Alternative Would Not Interfere with Attainment or Maintenance of the NAAQS

[56] 40 CFR Part 51, Appendix W, Section IV.D., under Step 3 [emphasis added].

EPA's reconsideration of the Trump Final Rule should extend to its determination that the BART alternative would not violate the Clean Air Act's anti-backsliding provisions and should afford the public an opportunity to comment on EPA's new interpretation of those provisions. Section 110(*l*) of the Clean Air Act prohibits EPA from approving an implementation plan revision if the revision would "interfere with any applicable requirement concerning attainment and reasonable further progress … or any other applicable requirement of this chapter." 42 U.S.C. § 7410(*l*). Because EPA had proposed to replace its NOx BART FIP emission limits for Hunter Units 1 and 2 and Huntington Units 1 and 2 with the less stringent NOx emission limits of Utah's BART alternative, EPA's approval of the BART alternative reflects a backsliding in regulatory requirements which EPA cannot approve without an adequate demonstration under Section 110(l) of the Clean Air Act.

In its January 2020 proposed rule, EPA simply relied on the fact that the Hunter and Huntington plants were not within a designated nonattainment area to claim that the Utah BART alternative would not interfere with attainment or reasonable further progress of attainment with the NAAQS.[57] Conservation Organizations commented that merely stating that the units are not part of a designated nonattainment area does not satisfy the requirement that EPA demonstrate that relaxation of NOx emissions limits for the Hunter and Huntington units would not interfere with attainment or maintenance of the NAAQS or any other Clean Air Act requirement.

In response to Conservation Organizations' comments, EPA cited new information, including several new documents it added to the record for the Trump Final Rule, which the public has not yet had a formal opportunity to comment on. For example, eight-hour average ozone and twenty-four-hour average PM10 monitoring data were included in the ''Air Quality System Preliminary Design Value Report,'' dated October 7, 2020 and the ''Air Quality System

[57] Proposed Rule, 85 Fed. Reg. at 3,574.

Preliminary Design Value Report,'' dated September 15, 2020 (Docket ID Nos. EPA-R08-OAR-2015-1144 and EPA-R08-OAR-2015-1145). With respect to the PM10 report, EPA relied on this data to state that Salt Lake County, Utah County, and Ogden City are continuing to attain the 2006 24-hour PM10 NAAQS after being redesignated as attaining the PM10 NAAQS in February 2020.[58] With respect to the 8-hour average ozone data, EPA stated that "monitors in the geographic area do not currently show exceedances of the ozone NAAQS."[59]

The preliminary data do not support EPA's claim in the Trump Final Rule that the BART alternative will not interfere with attainment of the NAAQS. Among other issues, the ozone monitoring data for the air monitoring stations in Price, Lindon, and Spanish Fork actually do show NAAQS "exceedances" (i.e., 4th maximum 8-hour average ozone concentration in excess of 0.070 parts per million (ppm)) in 2018 at all three monitors, including the monitor in Price, Utah which is closest to the Hunter and Huntington power plants.[60] In addition, while EPA relied on 24-hour hour PM10 monitoring data from Salt Lake County and Ogden to make the claim that those areas attained the 24-hour PM10 NAAQS without the NOx BART emission reductions from the Hunter and Huntington units,[61] EPA excluded ozone monitoring data from Salt Lake County and Ogden (in Weber County) from its record. EPA seemed to selectively choose which area's monitoring data to rely on to claim that the BART alternative will not violate antibacksliding requirements for ozone.

EPA also cited to a meteorological study called the Hybrid Single-Particle Lagrangian Integrated Trajectory (HYSPLIT) analysis on which the agency purportedly relied in its 2018

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[58] As discussed at Trump Final Rule, 85 Fed. Reg. at 75,865.
[59] *Id.*
[60] *See* "Air Quality System Preliminary Design Value Report," dated October 7, 2020, at page 2 (Docket ID EPA-R08-OAR-2015-1144).
[61] Trump Final Rule, 85 Fed. Reg. at 73,865.

ozone designation process.[62] EPA also claimed that the "HYSPLIT" analysis shows that back trajectories "rarely originated or passed" through Carbon and Emery counties (where Hunter and Huntington are located) on high ozone days in the Wasatch Front.[63] However, EPA did not add or include the HYSPLIT analysis to the docket for the Trump Final Rule. While EPA cited to the 2015 Ozone National Ambient Air Quality Standards Technical Support Document,[64] EPA also failed to include that 2015 Technical Support Document in the record. EPA cited to the same 2015 Technical Support Document to support its finding that, in 2018, EPA determined that the ozone violations in the Uinta Basin are a "highly localized phenomenon."[65] EPA concluded that "we determined in 2018 that the Hunter and Huntington power plants do not contribute to the Northern Wasatch Front and Southern Wasatch Front ozone non-attainment areas, and that the Uinta Basin nonattainment area is a highly localized phenomenon and sources in surrounding counties, including the Hunter and Huntington power plants, do not contribute to the violating area."[66]

The Conservation Organizations reviewed the June 4, 2018 ozone designations rulemaking that EPA cited in its November 27, 2020 final rulemaking,[67] and it made no mention of any finding that the Hunter and Huntington power plants do not contribute to ozone concentrations in any of these areas.[68] While it is possible that the HYSPLIT analysis and the 2015 TSD could support EPA's statement, those documents were not made available for review during the public comment period on the proposed rule and those documents were not included

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[62] Trump Final Rule, 85 Fed. Reg. 73,866.
[63] *Id.*
[64] *Id.* at n.52.
[65] *Id.* at *73,866.*
[66] *Id.*
[67] *Id.* at n/ 52.
[68] 83 Fed. Reg. 25,776-25,848 (June 4, 2018).

in the record for the Trump Final Rule. Thus, at a minimum, reconsideration is warranted to allow the public an opportunity to review and comment on these critical documents.

For the PM2.5 NAAQS, EPA relies on an October 2018 determination of attainment for the Logan area and on its June 8, 2020 proposed finding of attainment for Salt Lake and Provo to support its determination that the Utah BART alternative will not violate the Clean Air Act's antibacksliding provisions.[69] EPA also states that Utah submitted redesignation requests for the Logan, Salt Lake City, and Provo PM2.5 nonattainment areas in January 2020, but EPA had not taken any action on these redesignation requests as of the date of the Trump Final Rule. To lawfully approve those redesignation requests, EPA will have to find that Utah demonstrated the ability to maintain compliance with the PM2.5 NAAQS for ten years into the future, but it is unclear whether Utah relied on the planned NOx BART emission reductions at the Hunter and Huntington power plants in those demonstrations. EPA did not include the redesignation requests in the docket for the Trump Final Rule, nor did EPA make any claim that Utah or EPA made any finding with respect to the Hunter and Huntington Power Plants' impacts on PM2.5 concentrations in those areas. Instead, EPA inexplicably stated that the burden was on the Conservation Organizations to provide evidence that the areas will not continue to attain and maintain the PM2.5 NAAQS in the absence of the NOx BART emission reductions at the Hunter and Huntington Power Plants.[70] Contrary to EPA's suggestion, Section 110(*l*) of the Clean Air Act puts the burden on the Administrator to demonstrate that its approval of a revision to an implementation plan will not interfere with attainment or maintenance of the NAAQS, and Section 175A(a) of the Clean Air Act puts the burden on the State of Utah to demonstrate that its

[69] Trump Final Rule, 85 Fed. Reg. at 75,866, referring to 83 Fed. Reg. 52,983 (Oct. 19, 2018) and 85 Fed. Reg. 35,033 (June 8, 2020).
[70] Trump Final Rule, 85 Fed. Reg. at 75,866.

PM2.5 maintenance plan will ensure maintenance of the PM2.5 NAAQS for ten years into the future. If EPA relied on Utah's PM2.5 maintenance plans to demonstrate that the relaxation of the NOx BART emission limits at the Hunter and Huntington units will not interfere with attainment or maintenance of the PM2.5 NAAQS to meet its requirement to comply with Section 110(*l*) of the Clean Air Act, those maintenance plans should have been made part of the docket for this rulemaking, and EPA should have provided the opportunity for public review and comment on those plans. Moreover, EPA should reconsider its determination that Utah's BART alternative will not interfere with attainment or maintenance of PM2.5 NAAQS in any area.

In summary, EPA's final rulemaking for the Utah BART alternative approval added significant information that purports to support EPA's finding in the Trump Final Rule that Utah's BART alternative would not interfere with attainment or maintenance of the NAAQS, but that information does not definitively support EPA's finding and the public has not had the opportunity to review and comment to EPA on that information. EPA should afford the public a formal opportunity to review and comment on this information and reconsider the Trump Final Rule in light of these comments.

CONCLUSION

Based on the foregoing, the Conservation Organizations request that EPA reconsider the Trump Final Rule and re-impose the 2016 FIP for Utah's BART regional haze requirements. We ask that the Biden EPA respond in writing to this Petition stating that it is reconsidering the above-referenced Final Rule. Then, we ask the Biden EPA to promptly issue a proposed rule withdrawing the post-election Trump Final Rule and re-instating the FIP.

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Respectfully submitted this 21st day of January 2021.

/s/ Jenny K. Harbine
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Counsel for Petitioners

Message

From: POLITICO Pro [alert@email.politicopro.com]
Sent: 1/27/2021 11:14:03 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: U.S. planning to end public financing of foreign fossil fuel projects

U.S. planning to end public financing of foreign fossil fuel projects

By Karl Mathiesen, Zack Colman

01/27/2021 06:11 PM EST

BRUSSELS — The Biden administration is developing a plan to wind down U.S. taxpayer funding for foreign coal, oil and gas projects.

Amid a series of executive orders on climate change, President Joe Biden will also announce "a plan for ending international financing of fossil fuel projects with public money," Presidential Climate Envoy John Kerry told a meeting of the World Economic Forum on Wednesday.

By signaling an effort across fossil fuels broadly, Kerry's announcement could take the administration beyond President Barack Obama's policy of withholding finance for building overseas coal-fired power plants.

The climate change executive order that Biden issued Wednesday called on the Treasury secretary to work with the secretaries of State and Energy, the Export-Import Bank, U.S. International Development Finance Corp. and others on a plan that would "promote ending international financing of carbon-intensive fossil fuel-based energy while simultaneously advancing sustainable development and a green recovery." Agencies like Ex-Im and the International Development Finance Corp. leverage public dollars for global energy projects.

The order also called for assessing how the U.S. can steer global financial institutions like the International Monetary Fund and World Bank to promote economic recovery plans aligned with Paris agreement goals. The U.S. is a major shareholder in multilateral development banks.

Biden also directed Treasury to work with State, USAID and the Development Finance Corp. on a strategy to promote rainforest and other ecosystem protection, "including through market-based mechanisms." Carbon offsets, a widely used market-based mechanism, have attracted criticism for failing to provide promised emissions reductions.

The calls go beyond those Biden made on Jan. 20, the day he took office. After returning to the Paris agreement last week, the new administration has been under pressure to demonstrate the steps it is willing to take to limit emissions at home and abroad.

The measure Biden announced "adds to the snowballing momentum and pressure for other governments and institutions to follow suit," Alex Doukas, the Stop Funding Fossils program director at environmental group Oil Change International, said in a statement.

This week, the 27 EU countries agreed on an immediate end to public finance for foreign coal projects and said they would "discourage" investments in oil and gas.

Kerry said the host of presidential orders would make "climate central to foreign policy planning and national security preparedness."

He singled out China for being a major financier of fossil fuels around the world, saying Beijing was "funding 70 percent of the coal-fired power plants around the world in the Belt and Road initiative."

Kerry said: "The problem with gas is if we build out a huge infrastructure for gas now to continue to use it as the bridge fuel, when we haven't really exhausted the other possibilities, we're going to be stuck with stranded assets in 10, 20, 30 years."

Kerry said Biden will also ratify the Kigali Amendment to the Montreal Protocol, which limits the use of hydrofluorocarbons — potent greenhouse chemicals.

The U.S. will also announce a plan to increase financial flows to developing countries to help them cope with climate change.

Kerry said in a White House press briefing that the finance plan and increasing the the U.S. emissions target "are essential to our being able to bring countries of the world together to raise ambition and meet this moment" as nations head into U.N. climate talks later this year in Glasgow, Scotland.

To view online:
https://subscriber.politicopro.com/sustainability/article/2021/01/us-planning-to-end-public-financing-of-foreign-fossil-fuel-projects-2031124

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Message

From: Adhar, Radha [Adhar.Radha@epa.gov]
Sent: 1/28/2021 8:23:20 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: CRA Meeting tomorrow

Uh oh.
-----Original Message-----
From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Thursday, January 28, 2021 3:21 PM
To: Adhar, Radha <Adhar.Radha@epa.gov>
Subject: Re: CRA Meeting tomorrow

As frustrating as your war with your laptop must have been

Sent from my iPhone

> On Jan 28, 2021, at 3:19 PM, Adhar, Radha <Adhar.Radha@epa.gov> wrote:
>
> Absolutely! How did the conversation with Adrian go? I was in a war with my laptop.. :/
>
> -----Original Message-----
> From: Goffman, Joseph <Goffman.Joseph@epa.gov>
> Sent: Thursday, January 28, 2021 3:19 PM
> To: Adhar, Radha <Adhar.Radha@epa.gov>
> Subject: CRA Meeting tomorrow
>
> Would you consider including Melissa/OGC? Thanks
>
> Sent from my iPhone

Message

From: John Dunlap [john@dunlapgrp.com]
Sent: 1/23/2021 12:40:36 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]
CC: John Dunlap [john@dunlapgrp.com]
Subject: FW: TRUMP ADMINISTRATION: 11TH HOUR TENNESSEE/EPA Region 4 MATTER: Request for Biden Admininstration involvement/oversight
Attachments: ATT00001.txt; Urgent Tennessee matter - last minute Trump action.pdf

Jane/Joseph: Congratulations on the new EPA roles—the Biden team is fortunate to have you. I represent/consult for OPUS INSPECTIONS, they deliver I/M Programs for portions of the State of Tennessee and had a last minute matter rushed due to pressure (we believe) in Region 4 EPA. I served as the former Chairman of the CA Air Resources Board and consult for a host of green tech firms. What follows below and above is an overview of a serious problem. I am reaching out to you to see if anything can be done and in hope that you can point us in the proper direction for assistance and a possible repeal of this short-sighted action. Please let me know we can do and who we may speak to?

Kindest regards,

John Dunlap

BACKGROUND

The U.S. EPA should permanently withdraw the January 19 draft final rule Eliminating Emissions Testing in Tennessee The former U.S. EPA Region 4 Administrator, Mary Walker, signed a draft final rule on January 19, 2021 just hours before the transition to the incoming Biden administration. The draft final rule document indicated that the EPA planned to submit it for publication in the Federal Register.

On January 20, 2021, President Biden ordered a "Regulatory Freeze Pending Review" for rules that have been sent to the OFR but not published in the Federal Register. The order requires that such rules be immediately withdrawn from the OFR for review and approval.

Additionally, on January 20, 2021, President Biden signed an Executive Order declaring, "It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water…" The order continues, "The heads of all agencies shall immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policy set forth in section 1 of this order. For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions." It is clear both from timing and the content of the draft final rule that it was rushed out the door under political pressure from the outgoing administration. This is evidenced by this statement in the preamble paragraph, "This document is not disseminated for purposes of EPA's Information Quality Guidelines and does not represent an Agency determination or policy."

Furthermore, the draft final rule includes only perfunctory responses to numerous comments submitted to the EPA Docket that presented detailed scientific analysis demonstrating that many aspects of TDEC's attainment demonstration are technically flawed.

One such independent study of the Middle Tennessee area (attached) submitted to the docket was prepared by Gregory Stella, Managing Partner of Alpine Geophysics, a highly respected research organization with extensive background in air quality analysis. Mr. Stella is also a former emissions and modeling specialist for the U.S. EPA. The EPA's failure to property respond to the Alpine study further shows that the Agency, in its rush to publish, did not fulfil its responsibility

for "consideration of the relevant matter presented" under 5 U.S. Code § 553, Administrative Procedures Act. Additionally, the draft rule appears to be "inconsistent with, or present obstacles to, the policy" of the Biden Administration expressed in the Executive Order noted above. Accordingly, the U.S. EPA should permanently withdraw the January 19 draft final rule and return it to EPA Region 4 to conduct thorough and proper analysis of the Alpine Study and other relevant documentation submitted to the docket. We believe that a complete review and analysis by EPA's Office of Air and Radiation will support rejection of both TDEC requests that US EPA allow the removal of the Vehicle I/M Program for both Hamilton County and the Middle Tennessee Area embodied in US EPA Docket ID No's EPA-R04-OAR-2019-0618 and 0619 for the reasons described above and following reasons:

• It is a known fact that exposure to air pollution retards lung development in children and reduces lung function in adults, especially older adults and people with asthma. Not surprisingly, a recent Harvard study (http://bit.ly/3o8Ap7b) suggests that air pollution is affecting COVID-19 negative outcomes and mortality.

• Many local elected officials and environmental organizations have voiced concerns including Reps. Yusuf Hakeem and Bob Freeman, American Lung Association, Climate Nashville, Nashville Indivisible, Tennessee Heartwood, Tennessee Citizens for Wilderness Planning, and Nashville Indivisible.

• The American Lung Association found that 4 in 10 people are breathing poor air quality which significantly hurts those with respiratory ailments like COPD and asthma. Davidson County received a C-rating on the most recent American Lung Association air quality report. These facts combined with the adverse effects of covid-19 stand to cause great harm to citizens

• Metro governments keep $3.50 from every $9 emissions test ($5.6 million distributed across the municipalities). Cities would lose this revenue from the 1.6 million vehicles that are tested each year. The state agency keep $2.80

• If Tennessee slips back into non-attainment after removing emissions testing, numerous counties around Nashville and Chattanooga will be required to re-create and reinstate a system for individual vehicle testing, or place that burden on stationary source polluters. Increasing regulations on the stationary source polluters could create significant financial burden on Tennessee's central economic drivers and employers.

• Both the Tennessee Road Builders' Association and the Tennessee Chamber of Commerce have voiced concerns about unintended consequences to businesses that are stationary sources. Please consider these unintended effects of this rule change to preserve the quality of the air Tennesseans breathe. Attachment: Independent Review of the Tennessee Department of Environment and Conservation's Clean Air Act Section 110(1) Noninterference Demonstration for the Removal of the Inspection and Maintenance Program in the Middle Tennessee Area and Response to TDEC-APC Comments, Prepared by: Alpine Geophysics, LLC, 387 Pollard Mine Road, Burnsville, NC 28714, Gregory Stella, Managing Partner, February 2020.

John D. Dunlap, III
President

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The U.S. EPA should permanently withdraw the January 19 draft final rule Eliminating Emissions Testing in Tennessee

The former U.S. EPA Region 4 Administrator, Mary Walker, signed a draft final rule on January 19, 2021 just hours before the transition to the incoming Biden administration. The draft final rule document indicated that the EPA planned to submit it for publication in the Federal Register.

On January 20, 2021, President Biden ordered a "Regulatory Freeze Pending Review" for rules that have been sent to the OFR but not published in the Federal Register. The order requires that such rules be immediately withdrawn from the OFR for review and approval.

Also, on January 20, 2021, President Biden signed an Executive Order declaring, "It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water…" The order continues, "The heads of all agencies shall immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policy set forth in section 1 of this order. For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions."

It is clear both from timing and the content of the draft final rule that it was rushed out the door under political pressure from the outgoing administration. This is evidenced by this statement in the preamble paragraph, "This document is not disseminated for purposes of EPA's Information Quality Guidelines and does not represent an Agency determination or policy."

Furthermore, the draft final rule includes only perfunctory responses to numerous comments submitted to the EPA Docket that presented detailed scientific analysis demonstrating that many aspects of TDEC's attainment demonstration are technically flawed. One such independent study of the Middle Tennessee area (attached) submitted to the docket was prepared by Gregory Stella, Managing Partner of Alpine Geophysics, a highly respected research organization with extensive background in air quality analysis. Mr. Stella is also a former emissions and modeling specialist for the U.S. EPA.

The EPA's failure to property respond to the Alpine study further shows that the Agency, in its rush to publish, did not fulfil its responsibility for "consideration of the relevant matter presented" under 5 U.S. Code § 553, Administrative Procedures Act. Additionally, the draft rule appears to be "inconsistent with, or present obstacles to, the policy" of the Biden Administration expressed in the Executive Order noted above.

Accordingly, the U.S. EPA should permanently withdraw the January 19 draft final rule and return it to EPA Region 4 to conduct thorough and proper analysis of the Alpine Study and other relevant documentation submitted to the docket. We believe that a complete review and analysis by EPA's Office of Air and Radiation will support rejection of both TDEC requests that US EPA allow the removal of the Vehicle I/M Program for

both Hamilton County and the Middle Tennessee Area embodied in US EPA Docket ID No's EPA-R04-OAR-2019-0618 and 0619 for the reasons described above and following reasons:

- It is a known fact that exposure to air pollution retards lung development in children and reduces lung function in adults, especially older adults and people with asthma. Not surprisingly, a recent Harvard study (http://bit.ly/3o8Ap7b) suggests that air pollution is affecting COVID-19 negative outcomes and mortality.
- Many local elected officials and environmental organizations have voiced concerns including Reps. Yusuf Hakeem and Bob Freeman, American Lung Association, Climate Nashville, Nashville Indivisible, Tennessee Heartwood, Tennessee Citizens for Wilderness Planning, and Nashville Indivisible.
- The American Lung Association found that 4 in 10 people are breathing poor air quality which significantly hurts those with respiratory ailments like COPD and asthma. Davidson County received a C-rating on the most recent American Lung Association air quality report. These facts combined with the adverse effects of covid-19 stand to cause great harm to citizens.
- Metro governments keep $3.50 from every $9 emissions test ($5.6 million distributed across the municipalities). Cities would lose this revenue from the 1.6 million vehicles that are tested each year. The state agency keep $2.80.
- If Tennessee slips back into non-attainment after removing emissions testing, numerous counties around Nashville and Chattanooga will be required to re-create and reinstate a system for individual vehicle testing, or place that burden on stationary source polluters. Increasing regulations on the stationary source polluters could create significant financial burden on Tennessee's central economic drivers and employers.
- Both the Tennessee Road Builders' Association and the Tennessee Chamber of Commerce have voiced concerns about unintended consequences to businesses that are stationary sources.

Please consider these unintended effects of this rule change to preserve the quality of the air Tennesseans breathe.

Attachment:
Independent Review of the Tennessee Department of Environment and Conservation's Clean Air Act Section 110(1) Noninterference Demonstration for the Removal of the Inspection and Maintenance Program in the Middle Tennessee Area and Response to TDEC-APC Comments, Prepared by: Alpine Geophysics, LLC, 387 Pollard Mine Road, Burnsville, NC 28714, Gregory Stella, Managing Partner, February 2020.

Independent Review of the Tennessee Department of Environment and Conservation's Clean Air Act Section 110(l) Noninterference Demonstration for the Removal of the Inspection and Maintenance Program in the Middle Tennessee Area

And

Response to TDEC-APC Comments

Prepared for:

Opus Inspection, Inc.

1893 Elm Tree Drive

Nashville, TN 37210

via request from

Waller Lansden Dortch & Davis, LLP

511 Union Street, Suite 2700

Nashville, TN 37219

Prepared by:

Alpine Geophysics, LLC

387 Pollard Mine Road

Burnsville, NC 28714

Prepared and Authorized by:

Gregory Stella
Managing Partner

February 2020

My name is Gregory Stella. I am currently a Managing Partner of Alpine Geophysics, LLC, ("Alpine") a firm that offers highly specialized research and engineering services in the atmospheric sciences.

From 1997 until 2003, I served as an emissions and modeling specialist at the U.S. Environmental Protection Agency ("EPA" or "Agency"), Office of Air Quality Planning and Standards, where I managed and prepared the emission inventories, control strategies, and associated temporal, spatial and speciation data for the Regional Transport NOx SIP Call, Section 126 rulemaking, Tier-2 tailpipe standards, 1-hour attainment demonstrations, Heavy-Duty Diesel Engine standards, Multi-Pollutant legislation, Clear Skies Analysis, and US/Canadian Air Quality Agreements. For my efforts while at EPA, I received two U.S. EPA Gold Medals, for the NOx SIP Call Rulemaking (1999) and the Tier-2 Tailpipe Standard (2001) as well as a U.S. Department of Justice Certificate of Commendation for working with the Environment and Natural Resources Division (2000) and multiple Bronze Medals for Commendable Service.

Since 2003, I have been with Alpine where I am internationally recognized as a technical authority in the planning, design, development, evaluation, application, and modeling of local, national, and international emission inventories. My focus is on the policy options used for the projection and control of ozone and particulate matter pollutants and precursors. I have coordinated with Federal, State, Regional, Local, International, Tribal, and private workgroups, modeling centers, and stakeholders to develop, evaluate, and apply alternative control measures and control program designs in support of emissions and air quality analyses.

In September 2011 and again in June 2018, I was invited by and provided testimony before the U.S. House of Representatives Committee on Space, Science and Technology regarding work conducted by Alpine in modeling U.S. air quality, including discussion of analyses related to recent technological and air quality changes, and corresponding attainment results for federal ozone and particulate matter standards.

I have been tasked by the law firm of Waller Lansden Dortch & Davis, LLP, on behalf of Opus Inspection, Inc., to provide a review of the Tennessee Department of Environment and Conservation's (TDEC) assumptions related to its proposed change to the State Implementation Plan (SIP) under the authority of Tennessee Code Annotated, Section 68-201-105. This review is in preparation for a public hearing that has been called to consider TDEC's "Clean Air Act Section 110(l) Noninterference Demonstration for the Removal of the Inspection and Maintenance in the Middle Tennessee Area" (Noninterference Demonstration), which supports the removal of the program for Davidson, Williamson, Wilson, Sumner and Rutherford Counties' inspection and maintenance (I/M) programs from the SIP. Public Chapter No. 953, signed into law on May 15, 2018, requires the elimination of the Inspection & Maintenance program 120 days after final EPA approval of the 110(l) report.

This report originally was submitted on November 19, 2019, in response to the Air Pollution Control Division's Notice of Hearing posted on its website on October 18, 2019, in which the Division requested comments on its Noninterference Demonstration regarding removal of the inspection and maintenance (I/M) program requirement for the Middle Tennessee area from the State of Tennessee's State Implementation Plan (SIP). The Tennessee Air Pollution Control Board, at its meeting on January 8, 2020, voted to re-open the public comment period to allow Alpine to reply to the Division's responses to Alpine's original report, as well as to allow any other persons to submit comments on the Middle Tennessee Noninterference Demonstration. The public notice of the re-opening was issued on January 16, 2020, and the comment period closes on February 15, 2020. This revised report contains Alpine's eight original observations and recommendations for additional analyses, followed by the Air Division's responses, and Alpine's replies to the Air Division.

As you can see from my replies to the Air Division's responses to my original report, I firmly stand by my original observations and recommendations, and in some instances, provide additional justification to support my comments.

Summary of Observations

Based on my review of TDEC's proposed SIP changes and associated technical documentation[1], a summary of my observations follows. Justifications for the observations and recommendations for additional analyses are presented later in this report.

1. While current NAAQS-related design values are below levels of the standard in the Middle Tennessee domain, recent observations in air quality in the region have shown an upward trend in highest concentrations across all monitors indicating the reversal of improvements resulting from existing control programs. Between 2014 and 2018, 4th high maximum daily average (MDA8) values have remained the same or increased at every monitor in the domain.

2. TDEC has failed to simulate the impact of removal of the I/M program using air quality modeling. Ozone concentrations have non-linear correlation to NOx and VOC emission changes and cannot adequately be estimated exclusively using scaling ratios based on emission reduction sensitivities.

3. TDEC bases both its base year and future year emission assumptions on a version of EPA's 2014 National Emission Inventory (NEI) that is now multi-versions old. TDEC should consider revising its analysis using the most current, more appropriate version of the NEI that is based on a 2016 calendar year and was developed with significant input from state and regional organizations.

4. 2014 was not a conducive year for ozone sensitivity simulations, nor did it contain high ozone periods that would adequately allow for the determination of impact of control strategies and air quality response.

5. TDEC relies on a technical analysis completed in 2014 and that is based on inventories and assumptions now considered aged in their application of ozone sensitivity factors to estimate the impact of the removal of the I/M program. The factors generated from that work were identified as being inappropriate for other simulations beyond the scope of the original work.

6. TDEC makes an assumption that each ton of a pollutant precursor emission has an equal impact on air quality as compared to every other ton of the same pollutant precursor, regardless of emission source and where in the state the emissions occur. Recent modeling on this subject demonstrates that local motor vehicle source emissions have significantly greater impact on local air quality compared to all other source categories and regions.

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1 https://www.tn.gov/content/dam/tn/environment/air/documents/publicnotices/apc_SIP_IM_Removal_Middle_TN_08-28-19.pdf

7. Category-specific source apportionment analyses conducted elsewhere indicate that NOx emissions from Tennessee's motor vehicle source category may have a much greater impact on local air quality than estimated by TDEC.

8. TDEC includes in its assumptions that existing emission control programs will remain in force during the foreseeable future. As has been demonstrated by EPA, a significant number of federal air quality regulations have been "rolled back", removed from requirements, or are in the courts pending review and decision. Should these regulations be partially or completely stricken from the list of required control programs, assumptions included that assume emission decreases and associated air quality improvements will be invalidated.

The following statement has been taken from TDEC's website[2] and stresses the importance of the current I/M program on maintaining clean air in the Middle Tennessee region today and in the future (emphasis added):

> *"The State of Tennessee developed more restrictive regulations to control air pollution from mobile sources in counties that were not meeting the new 8-hour ozone Federal Standards for air quality. As a result, certain vehicles registered in Hamilton, Davidson, Rutherford, Sumner, Williamson and Wilson counties are required to pass a vehicle emission test. Gasoline and diesel vehicles with a model year of 1975 and newer and a Gross Vehicle Weight Rate (GVWR) of 10,500 lbs or less must pass an emission test before the vehicle's registration can be renewed. Motorcycles are exempt.*
>
> *Inspection programs such as the one implemented in Tennessee have proven to be very beneficial in reducing harmful ozone air pollution. Emissions from an individual car are generally low, relative to the smokestack image many associate with air pollution. But in numerous cities across the country, **the personal automobile is the single greatest polluter, as emissions from millions of vehicles on the road add up**. Driving a private car is probably a typical citizen's most "polluting" daily activity. Ozone levels in many cities have been reduced with the introduction of lower volatility gasoline, and as newer cars with improved emission control systems replaced older models. There has been significant progress in reducing vehicle emissions, but the number of cars on the road and the miles they travel make mobile sources an ongoing problem. Unless we dramatically reduce the amount of pollution vehicles emit in actual use, or drastically cut back on the amount we drive, smog-free air may become a problem for many of our cities."*

With this statement, TDEC recognizes the importance of emission control programs in Tennessee for achieving the clean air quality objectives required by EPA and for ensuring that people of the state can breathe freely without fear of health issues resulting from these emission sources. Compromising residents health and the current attainment status by removing the I/M program in the Middle Tennessee area is contrary to TDEC's objectives.

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[2] https://www.tn.gov/environment/program-areas/apc-air-pollution-control-home/apc/vehicle-inspection-program/important-information.html

1. **Design Values Are On The Rise**

While current 3-year averaged, NAAQS-related design values are below levels of the standard in the Middle Tennessee domain, recent observations in air quality in the region have shown an upward trend in highest ozone concentrations across regional regulatory monitors (listed in Table 1 and presented in Figure 1) indicating the reversal of improvements resulting from existing control programs inclusive of Tennessee's I/M program.

Table 1. Middle Tennessee regulatory ozone monitors.

AQS Site ID	County Name	Local Site Name
470370011	Davidson	East Health
470370026	Davidson	Percy Priest Dam
471650007	Sumner	Hendersonville Ozone Site at Old Hickory Dam
471870106	Williamson	Fairview Middle School
471890103	Wilson	Cedars of Lebanon

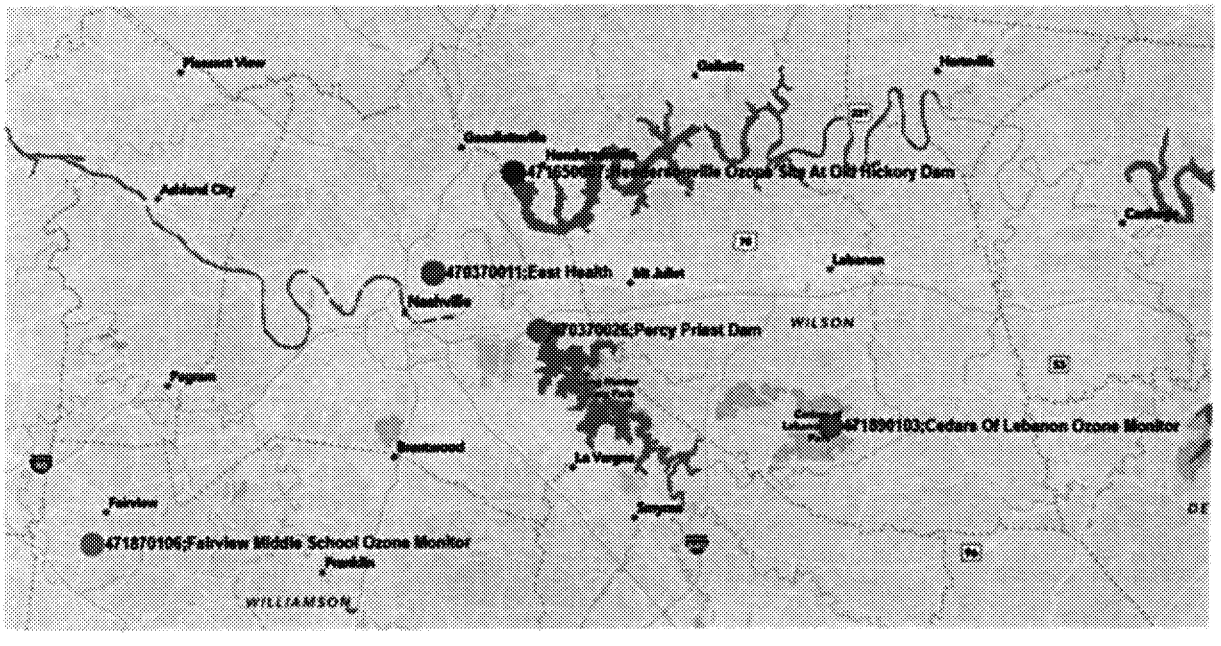


Figure 1. Location of Middle Tennessee regulatory ozone monitors.

Figure 2 presents the highest four observed MDA8 values across all monitors in the Middle Tennessee Core Based Statistical Area (CBSA) of Nashville-Davidson-Murfreesboro-Franklin, Tennessee for the years of 2014 through 2018. As can be seen in this figure, for each of the top four observations each year, the trend has shown an increase (noted by the linear trend; dotted line).

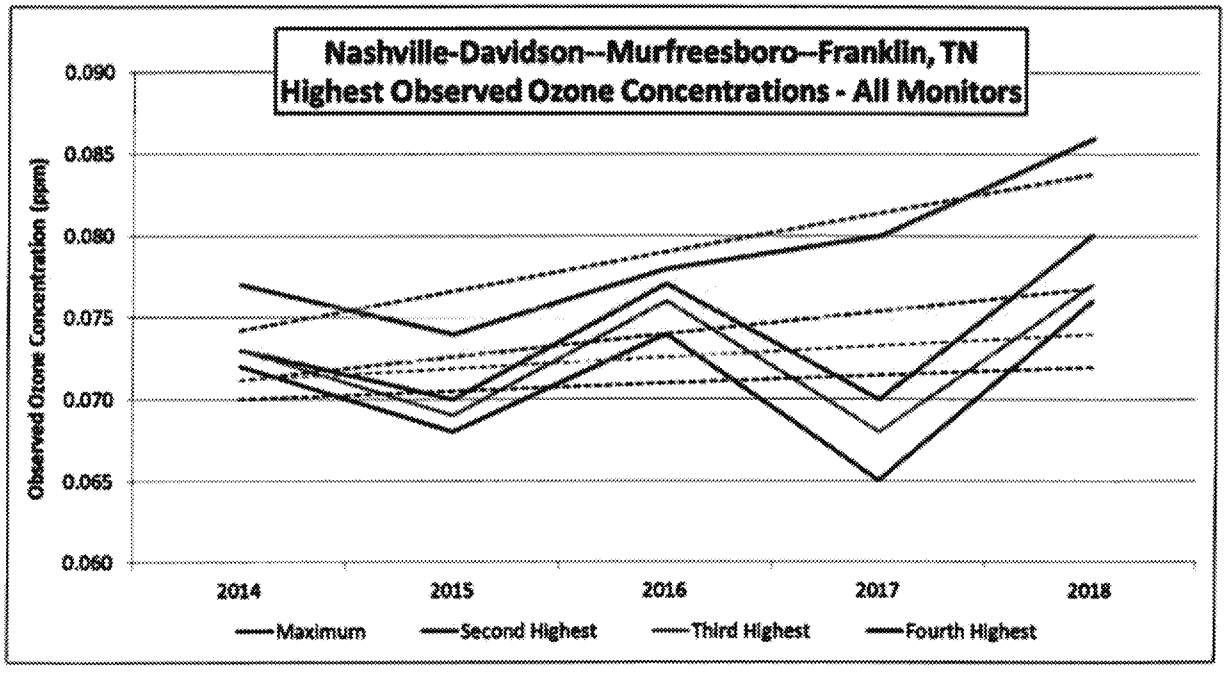


Figure 2. Increasing trend of MDA8 ozone concentrations at Middle Tennessee monitors between 2014 and 2018.

Additionally, when comparing monitor-level 4th high ozone MDA8 concentrations for receptors in the Middle Tennessee region, values that are used by EPA in determining ozone attainment and designations, not a single monitor has shown a decrease between 2014 and 2018. In fact, of the five monitors in the domain, as shown in Figure 3, three show no change in 4th high MDA8 concentrations between the two years while the other two monitors show an increase of up to 3 parts per billion (ppb) in the MDA8 concentration observed.

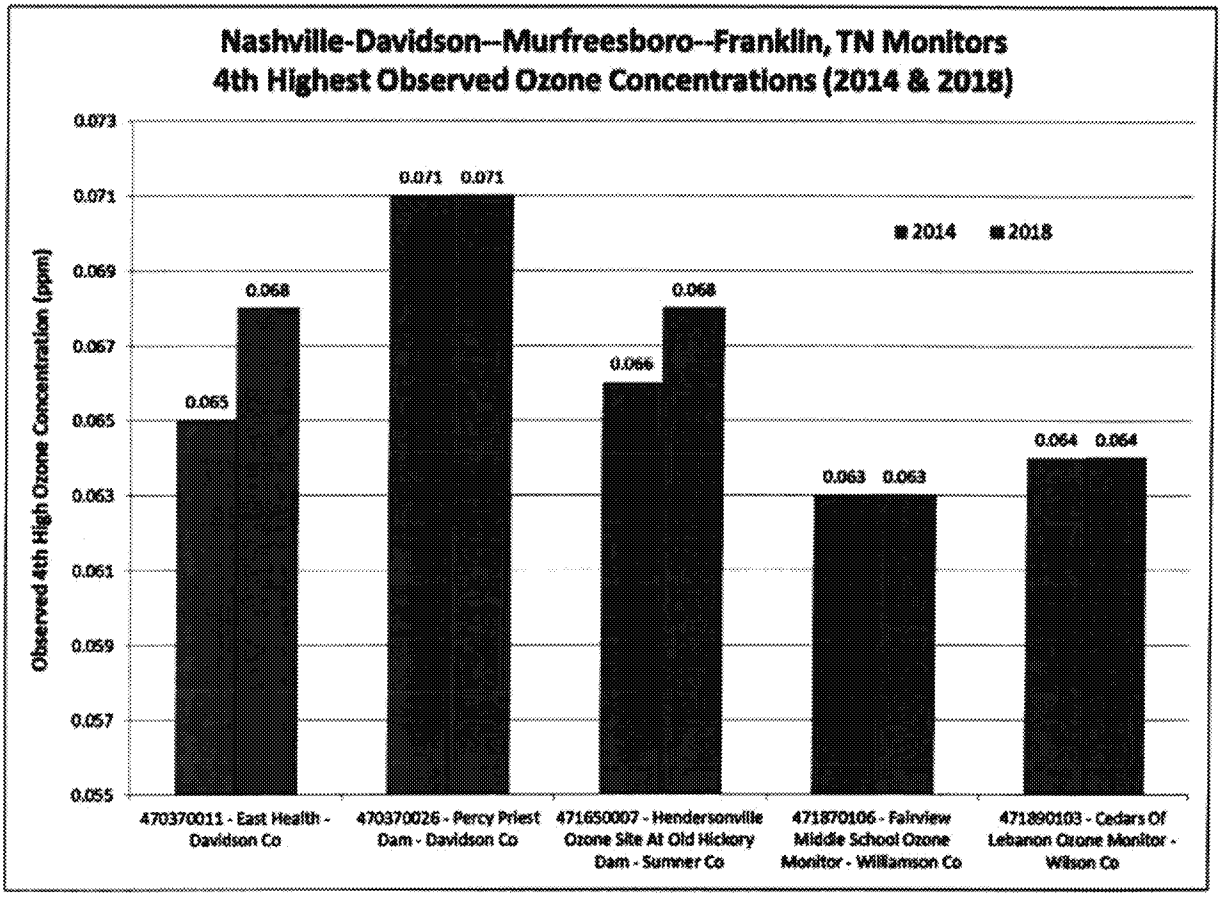


Figure 3. Comparison of 4th High MDA8 Ozone Concentrations at Regulatory Monitors in Middle Tennessee Region.

TDEC-APC Comment: The TDEC-APC agrees with the part of the comment that Middle Tennessee is currently in attainment with all of the ozone NAAQS including the current 2015 ozone NAAQS of 70 ppb. The TDEC-APC disagrees with the assessment that there is an upward trend in ozone values. The commenter did not use the correct metric for assessing ozone values. The commenter looked at the highest four values in each year from all of the monitors combined. The ozone values should be looked at separately for each monitor. The metric established by EPA that is used for the NAAQS is called the design value, which is the fourth–highest daily maximum, averaged across three consecutive years for each monitor. The highest design value for the five ozone monitors in Middle Tennessee is 72 in 2014, 67 ppb in 2015, 67 ppb in 2016, 66 ppb in 2017, and 67 ppb in 2018. Preliminary data in 2019, indicates that the highest design value for the five ozone monitors will be 66 ppb. The TDEC-APC would characterize this as a flat trend or even a slightly downward trend.

Response: I agree that for purposes of calculating attainment with the ozone NAAQS, a three year average of the 4th highest observations at individual design values is the appropriate metric to use. However, I disagree with TDEC-APC that this is the only correct metric that can and should be used to demonstrate air quality changes in the region. My use of 4th high trends across all monitors in the

region is consistent with practices that demonstrate changes in ozone concentrations across an entire region. EPA does not selectively choose a single monitor within an air shed to represent the entire area, instead, it looks at all the monitors in the region, recognizing that meteorology, economic trends, changes in activity, etc. all play a role in how air quality in an area can move in time and space.

I stand behind my review of using the highest observations across each monitor to demonstrate that air quality is not improving in the Middle Tennessee area and add the following observations to our assessment.

EPA also uses the Air Quality Index (AQI) metric to demonstrate how air quality changes over time. The AQI is an index for reporting daily air quality. It tells you how clean or polluted your air is, and what associated health effects might be a concern for you. The AQI focuses on health effects that may be experienced within a few hours or days after breathing polluted air. EPA calculates the AQI for five major air pollutants regulated by the Clean Air Act: ground-level ozone, particle pollution (also known as particulate matter), carbon monoxide, sulfur dioxide, and nitrogen dioxide. For each of these pollutants, EPA has established national air quality standards to protect public health. Ground-level ozone and airborne particles are the two pollutants that pose the greatest threat to human health in this country.

An AQI value of 100 generally corresponds to the national air quality standard for the pollutant, which is the level EPA has set to protect public health. AQI values below 100 are generally thought of as satisfactory. When AQI values are above 100, air quality is considered to be unhealthy-at first for certain sensitive groups of people, then for everyone as AQI values get higher.

Air Quality Index (AQI) Values	Levels of Health Concern	Colors
When the AQI is in this range:	*...air quality conditions are:*	*...as symbolized by this color:*
0 to 50	Good	Green
51 to 100	**Moderate**	**Yellow**
101 to 150	Unhealthy for Sensitive Groups	Orange
151 to 200	Unhealthy	Red
201 to 300	Very Unhealthy	Purple
301 to 500	Hazardous	Maroon

Figure 4. EPA Air Quality Index (AQI) color coded values.

When I look at these published AQI data for the 2014 through 2018 period, as seen in Figure 5, I see that the number of days observed at values at or above 100 (black line with red diamonds), considered unhealthy for sensitive groups, has an upward trend. In 2014, the number of days within the Nashville

air shed with days at or above the unhealthy for sensitive group value of 100 was 6 days. This number decreased to 2 days in 2015, increased again to 5 days in 2016, decreased again to the same value as reported in 2015 (2 days) and then increased four-fold to 8 days in 2018.

In fact, not only is there an upward annual trend in the number of days unhealthy for sensitive groups, the maximum value per year has shown an annual increase over this same period. In Figure 5, this value is represented by the bars and shows that between 2014 through 2018, this maximum value increases to the point of exceeding the unhealthy for all groups (red bar) value of 151 in 2018.

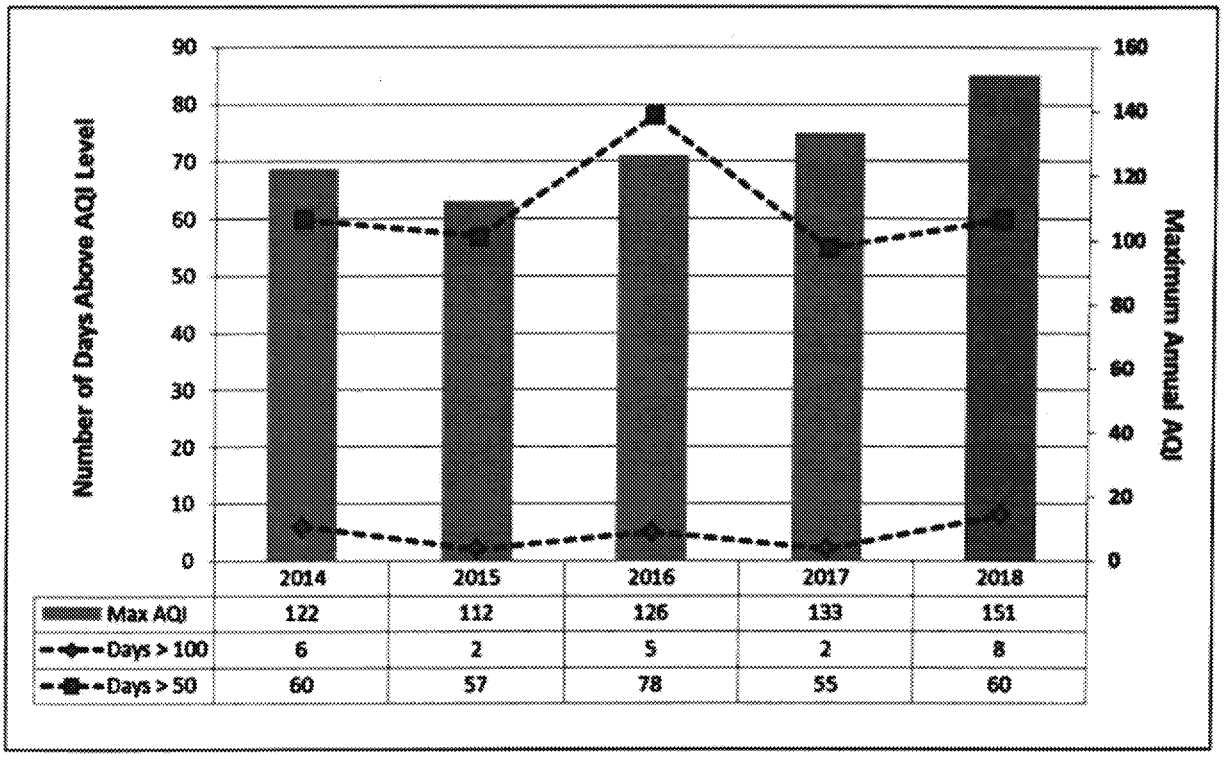


Figure 5. AQI metrics for Nashville-Davidson-Murferesboro-Franklin, TN area.

Interestingly, this increase in number of unhealthy days is indirectly proportional to decreases in ozone precursor emissions during this same time period. EPA publishes state-level emission totals by year for major source sectors within each state. At this time, state-level emissions by category for years up through 2017 are available. When I reviewed these emissions and their trends over time, I note decreases in annual NOx and VOC between 2014 and 2017.

Figures 6 and 7 show major category emission trends within Tennessee during this period with highlighted highway vehicle emissions noted on each bar. Figure 6 presents annual NOx emissions with calculated highway vehicle emissions decreasing from 148,000 tons per year in 2014 to 116,000 tons per year in 2017. Similarly, as shown in Figure 7, VOC emissions have also decreased over this period of time. Highway vehicle VOC emissions have decreased from 69,000 annual tons to 54,000 annual tons between 2014 and 2017.

This demonstrates a precarious relationship between emissions and air quality in the region because even with reductions in ozone precursor emissions reported in the state, air quality metrics used to measure health impacts have increased during the same time frame.

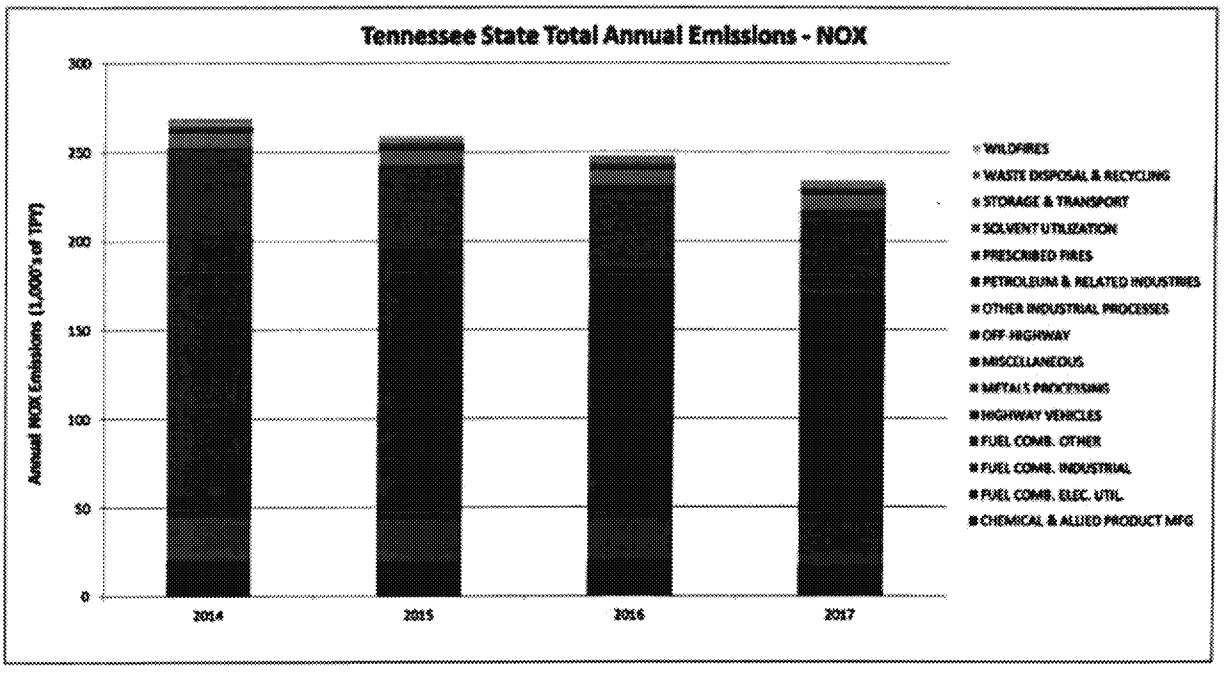


Figure 6. Tennessee NOx emission trends by major category.

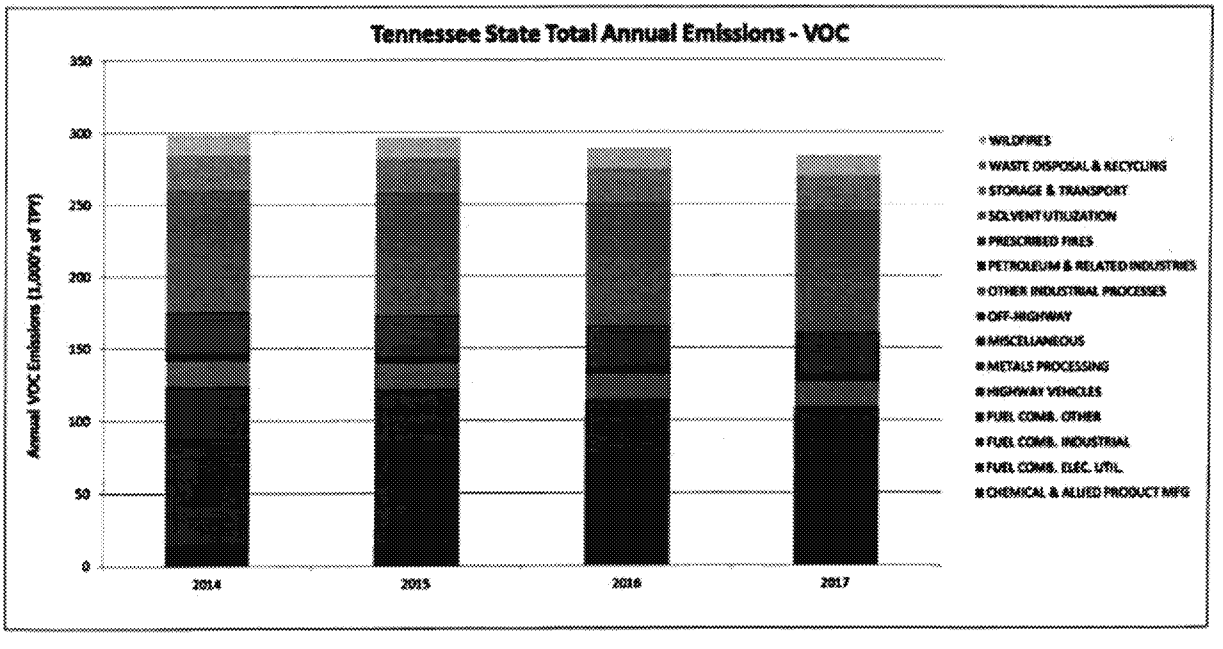


Figure 7. Tennessee VOC emission trends by major category.

Should TDEC-APC remove the I/M program in the Middle Tennessee area, increasing ozone precursor emissions from the highway vehicle sector by any amount, one can reasonably assume that AQI values and associated air quality concentrations would rise even more.

2. Air Quality Modeling Is Absent In The Analysis

TDEC has failed to simulate the impact of removal of the I/M program using air quality modeling. Ozone concentrations have non-linear correlation to NOx and VOC emission changes and cannot adequately be estimated exclusively using scaling ratios based on emission reduction sensitivities.

EPA SIP modeling guidance[3] notes that "[t]he application of a chemical transport grid model on a regional or local scale is the best tool available to judge the impacts of changes in future year emissions on concentrations." It further goes on to say "[a]ir agencies should determine whether a control program scenario will provide sufficient emission reductions to demonstrate attainment of the NAAQS using the modeled attainment test. The modeled attainment test is a technical procedure in which an air quality model is used to simulate base year and future air pollutant concentrations for the purpose of demonstrating attainment of the relevant NAAQS."

Formulation of a successful strategy against ozone pollution requires knowledge of the chemical regime for ozone production. Successive generations of atmospheric chemistry models have been developed to address this issue. Generally, air quality models are regarded as the most appropriate tools for assessing the expected impacts of a change in emissions.

TDEC, however, has failed to simulate the impacts of the I/M program removal with any air quality modeling. Instead, it has chosen to use external ozone sensitivity factors (inappropriate for this purpose as discussed elsewhere in this document) to estimate the changes in Tennessee air quality relative to the removal of this program.

While it may be possible to evaluate progress towards or degradation away from attainment of the ozone or PM2.5 NAAQS based on measured historical trends of air quality and emissions, there are several elements to that type of analysis that are difficult to quantify. First, in most cases, the ambient data trends are best assessed by normalizing to account for year-to-year meteorological variations. Second, one must have an accurate accounting of the year-to-year changes in actual emissions (NOx, VOC, and/or SO2 and NH3) for the given area and any surrounding areas, the emissions from which may impact local concentrations. Third, one must have a solid conceptual model of how ozone or PM2.5 is formed in the local area (e.g., influence of meteorology, NOx-limited, ammonia limited, transport-influenced, etc.).

Because TDEC has chosen to forego this most important step of simulating the removal of the I/M program with an air quality run, results presented in the noninterference demonstration cannot be considered technically complete.

[3] https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf

It is my recommendation that TDEC conduct a full air quality simulation of the impact of removal of the I/M program in Middle Tennessee before making any determination of its interference effect.

TDEC-APC Comment: Early in the process of developing the Noninterference Demonstration, the TDEC-APC consulted with the EPA on what information would be necessary to include in the demonstration. The EPA advised the TDEC-APC that an emission inventory projected out to 2022 would be needed in the demonstration, and the inventory should show two scenarios: (1) emissions with the I/M program and (2) emissions without the I/M program. Since the increase in emissions between the two scenarios was very small, the EPA advised the TDEC-APC that a full air quality photochemical modeling analysis was not required for the demonstration.

Response: I recognize that TDEC-APC consulted with EPA on what information would be necessary to include in the demonstration. However, it is still my recommendation that TDEC-APC simulate air quality changes resulting from the removal of the I/M program in the Middle Tennessee area using a chemical transport grid model to ensure that increases in air pollutant concentrations do not exceed NAAQS and health-based recommendations.

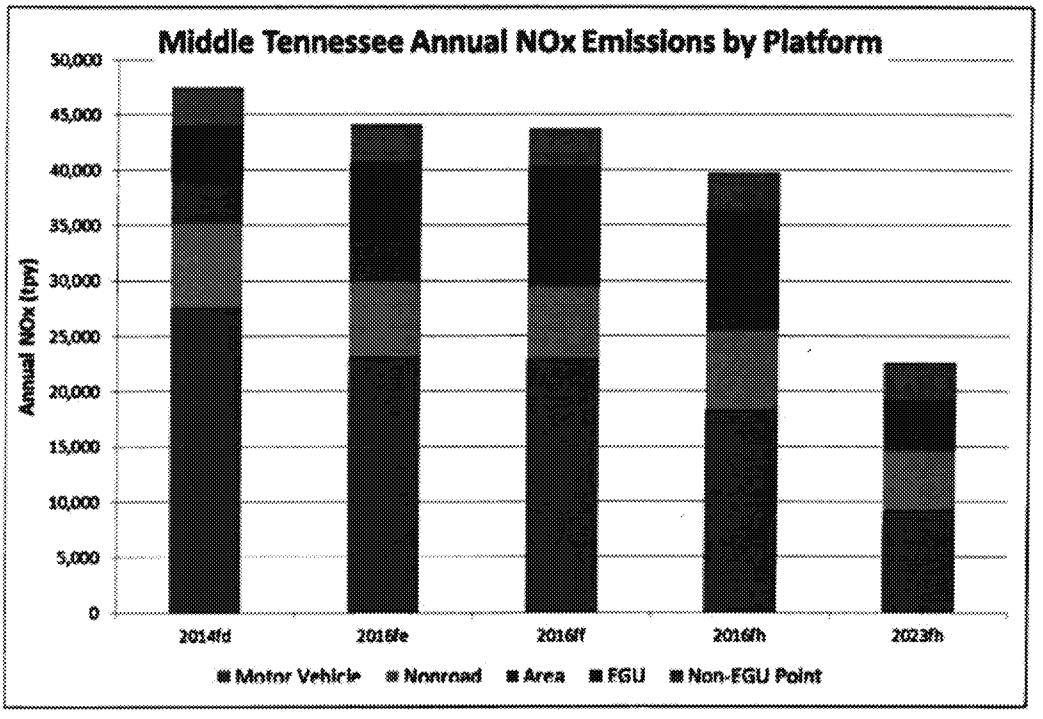
3. Newer Modeling Platforms Are Available for Use

TDEC bases both its base year and future year emission assumptions on a version of EPA's 2014 National Emission Inventory (NEI), version 2 that is now multi-versions old. TDEC should revise its analysis using the most current version of the NEI that is based on a 2016 calendar year that was developed with significant input from state and regional organizations.

Since the publication of EPA's 2014v2 NEI modeling platform (2014fd in Figure 8 below), EPA has released three incrementally newer modeling platforms using national, state, and local data sources[4]. These updated platforms improve estimates for emissions activity, magnitude, and temporal and spatial distribution, and use newer emission factors, methods, and models to derive their values.

The most current version of EPA's modeling platform is the 2016v1 (2016fh in Figure 8 below) platform that is described as a coordinated effort across over 245 state and regional air agency, EPA, and Federal Land Manager employees. Figure 8 below demonstrates the differences published in Middle Tennessee counties, annual emissions for NOx and VOC by major category across the multiple platforms and associated projections, including the two discussed above.

[4] https://www.epa.gov/air-emissions-modeling/2014-2016-version-7-air-emissions-modeling-platforms



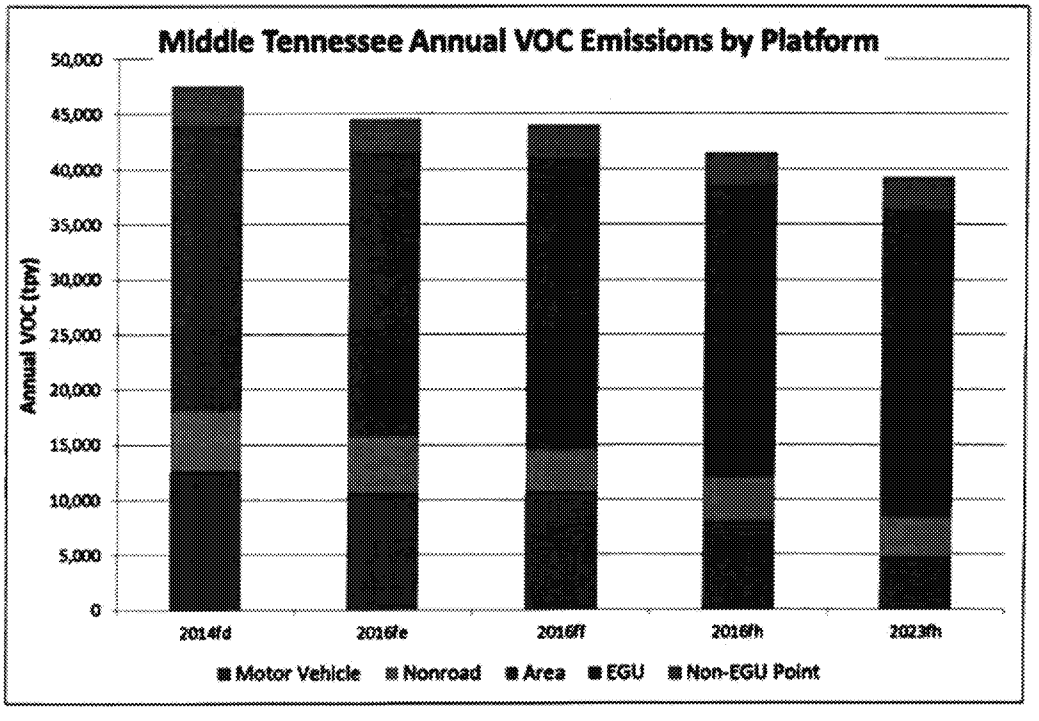


Figure 8. Annual emission summary of various EPA modeling platforms and associated projections for NOx (top) and VOC (bottom) Middle Tennessee counties.

The 2016fh platform and associated emission projections are demonstrably different in annual NOx and VOC from anthropogenic sources compared to the 2014fd platform cited by TDEC in its sensitivity

analysis and likely contain updated emission estimates for Middle Tennessee (and regionally impacting) source categories. Additionally, the fact that current emission estimates for motor vehicles in the Middle Tennessee region are decreasing, yet air quality has deteriorated in recent years, indicates that an additional increase in emissions, via the removal of the I/M program, may have an additional, accelerated deterioration impact on local air quality.

It is my recommendation that the most current modeling platform and associated emission projections be used to update the I/M analysis conducted by TDEC to account for improvements in emission estimates.

TDEC-APC Comment: For the onroad sector, the TDEC-APC did not use the 2014 NEI to project emissions. Instead, emissions from onroad sources are estimated through the use of locally gathered information on the vehicle population and the miles driven in each county, as well as a number of other inputs, combined with the EPA's Motor Vehicle Emissions Simulator (MOVES) model. For the nonroad and non-point sectors, the TDEC-APC used the 2014 NEI as a starting point to project emissions to 2022. For point sources with Major Source Permits in Sumner, Wilson, Rutherford, and Williamson Counties, the TDEC-APC projected emissions to 2022. Metro Nashville/Davidson County Pollution Control Division projected emissions to 2022 for all point sources in Davidson County. The 2016 base year platform, version 1 was not released until October 2019. Thus, the 2016 platform was not available when the TDEC-APC started its emission inventory work. The first draft of the Noninterference Demonstration was submitted to the EPA on April 29, 2019, well before the release of the 2016 base year platform.

Response: It is recognized that TDEC-APC was using the most current version of the national emission inventory at the time its noninterference demonstration was being prepared. Should revisions or reruns of the analysis be conducted (either emissions only or emissions and air quality), I continue to recommend that the most current modeling platform and associated emission projections be used to update the I/M analysis and to account for improvements in emission estimates across all sectors.

4. **2014 Inventory Is A Bad Year For Sensitivity Analysis**

As noted in TDEC's Noninterference Demonstration, TDEC selected 2014 as a base year to develop estimated air quality impacts of the removal of the I/M program in Middle Tennessee.

Meteorological conditions including temperature, humidity, winds, solar radiation, and vertical mixing affect the formation and transport of ambient ozone concentrations. Ozone is more readily formed on warm, sunny days when the air is stagnant and/or when the winds are favorable for transport from upwind source areas. Conversely, ozone production is more limited on days that are cloudy, cool, rainy, and windy. In general, below average temperatures are an indication that meteorological conditions are unconducive for ozone formation, whereas above average temperatures are an indication that meteorology is conducive to ozone formation.

EPA notes in its ozone and PM modeling guidance document that the selection of a base year for SIP and sensitivity modeling is dependent on model performance evaluations and the response to emissions controls over time periods that include a ramp-up to a high ozone period and a ramp-down to cleaner

conditions. This allows for a more complete evaluation of model performance under a variety of meteorological conditions. EPA recommends that one should choose time periods which reflect a variety of meteorological conditions that frequently correspond with observed 8-hour daily maximum concentrations greater than the level of the NAAQS at monitoring sites in the nonattainment area.

We note, as do EPA and others, that 2014 was not a conducive year for such an analysis, nor did it contain high ozone periods that would adequately allow for the determination of impact of control strategies and air quality response. In recent modeling documentation[5], EPA notes that the summer of 2014 was not particularly conducive for ozone formation in the Upper Midwest, Ohio Valley, South, and Southeast. EPA provides supporting information from NOAA's Temperature, Precipitation, and Drought website[6] that shows 2014 was a below average temperature year (Figure 9) and an above average precipitation year (Figure 10).

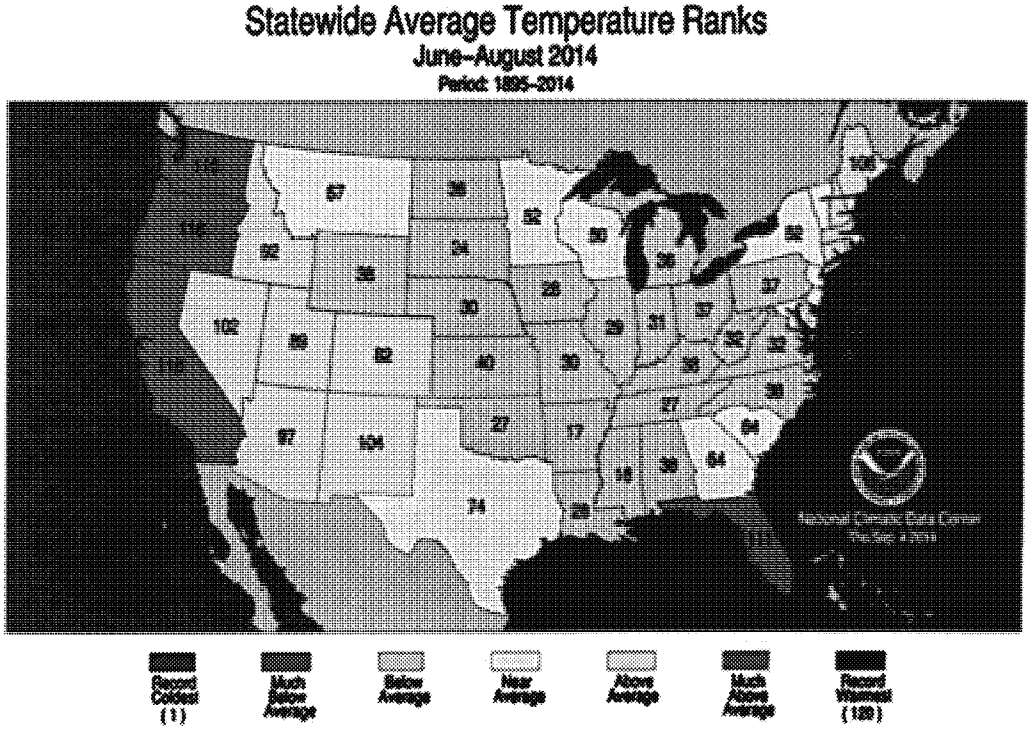


Figure 9. Statewide average temperature ranks, summer 2014.

In contrast, 2016 was an abnormally above average temperature year (Figure 11) for Tennessee and the Southeast, providing an alternative base year (as further discussed below) for this type of sensitivity to be conducted. This year is also consistent with EPA's latest modeling platform that could be used for this purpose.

[5] http://www.midwestozonegroup.com/files/EPA_maintenance_flexibility_Oct_19_2018.pdf
[6] https://www.ncdc.noaa.gov/temp-and-precip/

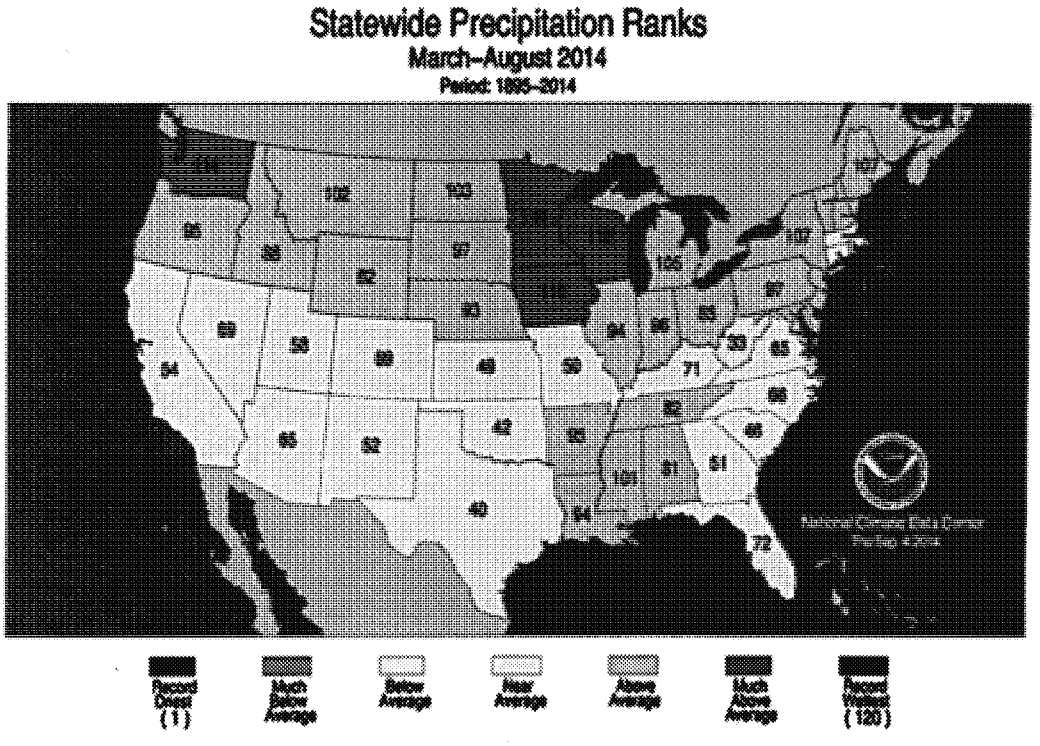


Figure 10. Statewide average precipitation ranks, summer 2014.

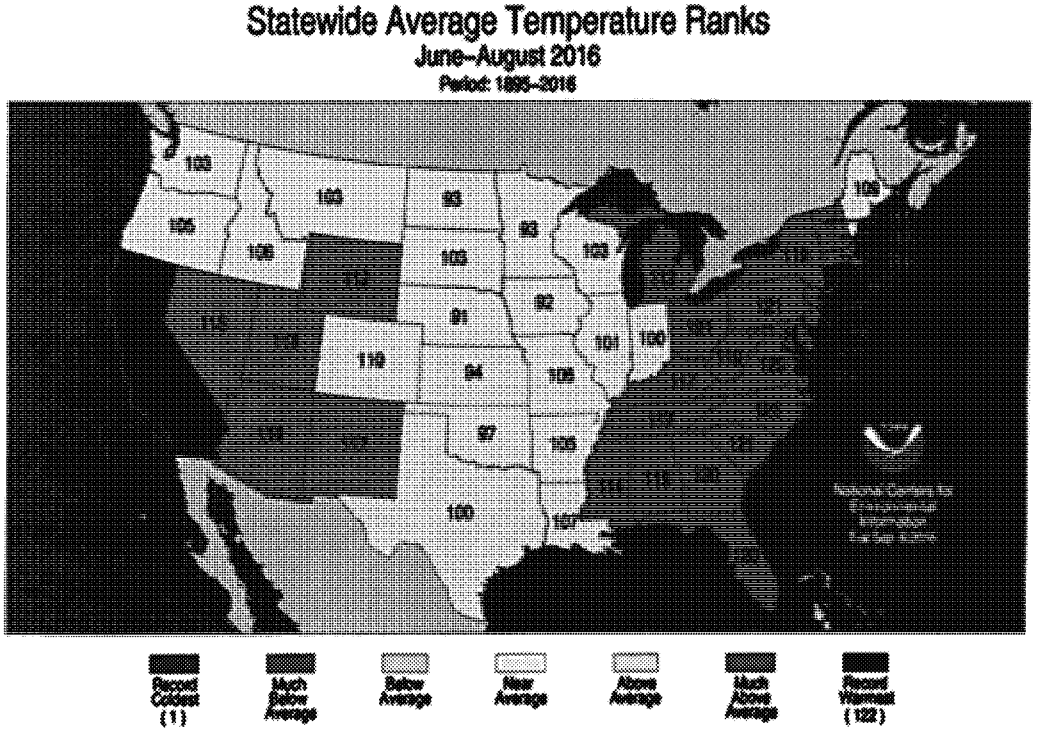


Figure 11. Statewide average temperature ranks, summer 2016.

It is my recommendation that TDEC conduct future ozone and PM modeling using a meteorological and associated base year inventory that meets the requirements of EPA guidance for the determination of impact of control strategies and air quality response.

TDEC-APC Comment: The TDEC-APC did not use 2014 as a base year for photochemical modeling so the meteorological conditions in this year are irrelevant. The TDEC-APC used the 2014 NEI as a starting point for many of the sectors to project emissions to 2022. However, for the most critical portion of the emissions inventories, the onroad sector, the TDEC-APC projected 2022 emissions from locally gathered information and the EPA' MOVES model.

Response: My recommendation for future year air quality modeling still applies and is relevant to demonstrating air quality changes associated with the removal of the I/M rule and should be undertaken using EPA guidance reflecting ozone-conducive years to establish base year model conditions.

5. **Ozone Sensitivity Factors Are Based On 2007 Data Projected to 2018**

TDEC relies on a technical analysis completed in 2014 that is based on inventories and assumptions now considered aged in their application of ozone sensitivity factors to estimate the impact of the removal of the I/M program. The "brute force" factors generated from this work are not applicable to current conditions and to the mix of sources and emissions in the analyzed region and are based on a calculation of emission reductions across all source sectors (not just I/M impacted sources) and across the entire state of Tennessee (not just the Nashville, Middle Tennessee region).

TDEC has relied on an analysis[7] conducted by Georgia Tech in 2014 (SEMAP) that is based on a 2007 base year emission inventory with 2018 projections using assumptions considered "On The Way" or "On The Books" at that time. My review of this study and platform find the following issues related to the study's use in TDEC's ozone sensitivity analysis.

To start, total Tennessee annual anthropogenic NOx emissions projected to 2018 in the SEMAP analysis (267,700 tpy) are 25% greater than actual emissions currently reported in Tennessee in the 2016v1 platform (214,542 tpy). This direction is reversed for anthropogenic VOC emissions where EPA's 2016v1 platform is 7% higher than the SEMAP 2018 projection (227,090 tpy v 210,706 tpy). This initially complicates the ozone sensitivity factor, as the ratio of ozone to NOx and VOC used by TDEC is based on emission levels significantly different than actual, current conditions.

Furthermore, when looking at motor vehicle source emission comparisons exclusively, EPA estimates that in 2016, onroad annual NOx (106,069 tpy) comprises 49% of total anthropogenic emissions from Tennessee. The SEMAP analysis estimated a significantly lower composition (36%; 95,973 tpy) in its 2018 projections used to create the ozone sensitivy factors used by TDEC. Annual motor vehicle VOC emissions also differ in contribution with SEMAP estimating 19% of total anthropogenic VOC (40,676

[7] http://semap.ce.gatech.edu/sites/default/files/files/SEMAP-Revised-Final-Report_Final.pdf

tpy) in 2018 from motor vehicle sources compared to EPA's 24% (53,649 tpy) from this same category-state combination. Figures 12 and 13 present this comparison for NOx and VOC, respectively.

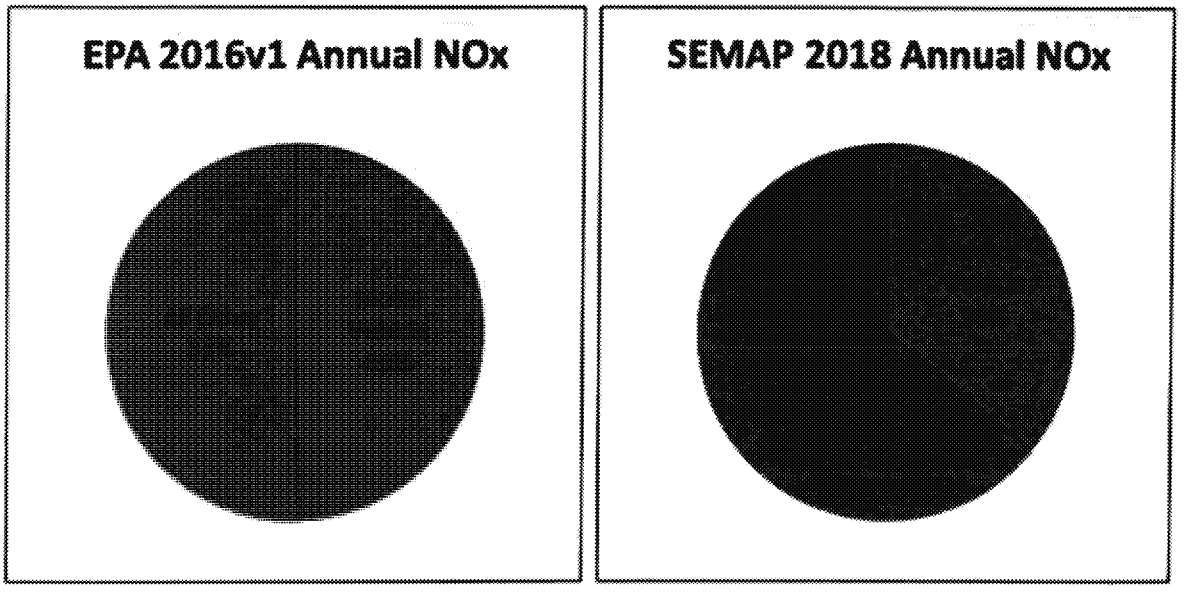


Figure 12. Comparison of annual NOx emissions from Tennessee motor vehicle sources as a percentage of total Tennessee NOx emissions.

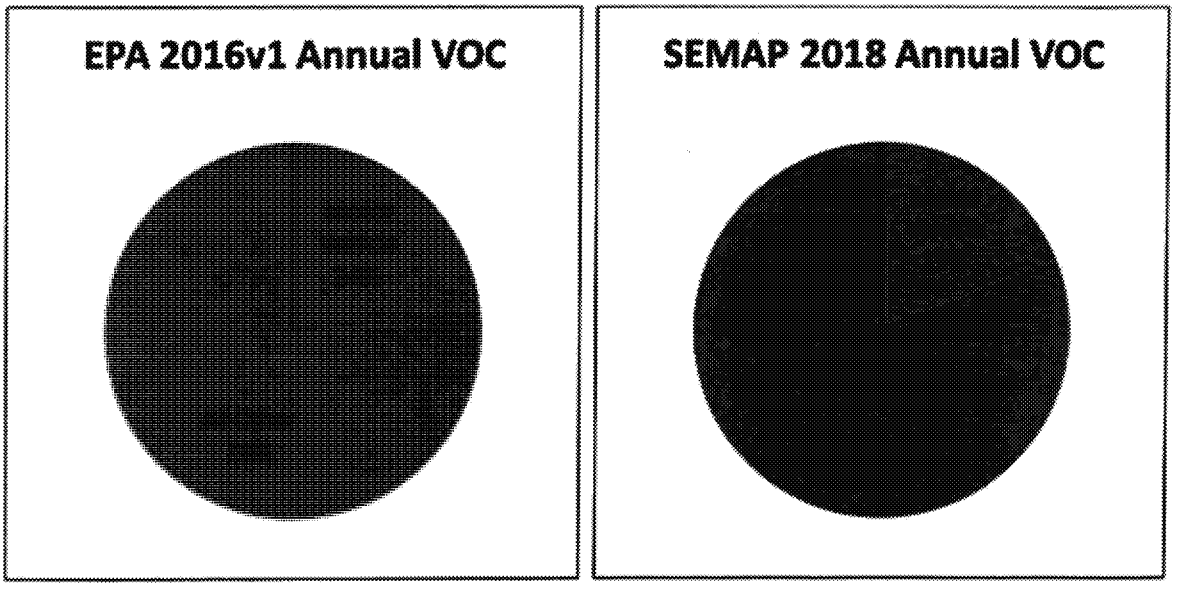


Figure 13. Comparison of annual VOC emissions from Tennessee motor vehicle sources as a percentage of total Tennessee VOC emissions.

As a result, the SEMAP calculated ozone sensitivity factor is based on an emissions magnitude AND a presumed source category emission ratio significantly different than today's actual distribution ratio as represented in the 2016v1 platform. This results in a sensitivity factor (ppb/ton reduced) calculated

from the SEMAP work that is not directly applicable to today's ozone conditions and that is likely not representative of the air quality change reflected in the removal of the I/M program.

It is my recommendation that TDEC consider alternate methods and air quality modeling than using an outdated modeling platform and projections, with source category distribution assumptions, significantly different than today's actual category and emissions mix, to determine the air quality impact of removing Middle Tennessee's I/M program.

TDEC-APC Comment: The TDEC-APC used the sensitivity analysis as a weight-of-evidence in the Noninterference Demonstration. The State of Georgia used the same SEMAP study to perform a similar sensitivity analysis for inclusion in their document titled "Noninterference Demonstration for the Relaxation of the Summertime Reid Vapor Pressure (RVP) Requirements in the Former 13-County Atlanta Designated Volatility Nonattainment Area". Georgia's Noninterference Demonstration was approved by the EPA in the Federal Register on September 20, 2019 (49470 Federal Register). The TDEC-APC believes that the EPA will approve Tennessee's Noninterference Demonstration with a sensitivity analysis based on the SEMAP study since Georgia's Noninterference Demonstration with a similar sensitivity analysis based on the same SEMAP study was approved by the EPA.

Response: The TDEC-APC is correct that Georgia used the same SEMAP study to perform and similar noninterference demonstration for relaxation of the summertime RVP requirements, however, TDEC-APC fails to note that Georgia DEP also proposed to demonstrate noninterference by substituting quantifiable, permanent, surplus, enforceable, and contemporaneous measures to achieve equivalent emissions reductions to offset the potential emissions increases associated with removal of the program[8]. In its approval notice[9], EPA noted that "[t]his RVP relaxation will not worsen air quality because Georgia's offsets provided compensating, equivalent emissions reductions to negate the increases in emissions from NOX and VOC."

In fact, Georgia established a current mobile vehicle emissions budget (MVEB) and secured emission offsets to the increases anticipated from the removal of the RVP program. They offered an offset equivalency demonstration as part of the noninterference demonstration. These offsets included locomotive conversation offsets, that replace higher-emitting, existing diesel locomotive engines with lower emitting locomotive engines, and school bus early replacement offsets, replacing older, higher emitting school buses with newer, lower emitting buses.

Georgia further demonstrates in their relaxed RVP gasoline analysis that the NOX and VOC emissions after 2014 are well below their calculated 2014 MVEB and project emissions and emissions increases to 2040 demonstrating that emissions from 2030-2040 never exceed their 2030 MVEB.

TDEC-APC does not provide any offset equivalency demonstration to counter the anticipated emission increases associated with the removal of the I/M program in Middle Tennessee nor does it calculate and provide additional support of meeting current and future year motor vehicle emission budgets. In fact,

[8] file:///C:/Users/winst/Downloads/9_RVP_Relaxation_110l_Final_Narrative.pdf
[9] 84 FR 16787

at Nashville Area Interagency Consolation Group meetings, concern was expressed about the area meeting the old MVEBs especially in light of the potential increase in emissions from the termination of the I/M program[10].

Because of these omissions, TDEC-APC has not provided comparable supporting analyses compared to Georgia's noninterference demonstration and therefore may fall short of EPA's approval.

6. TDEC's Misuse of the SEMAP Ozone Sensitivity Factor

TDEC notes in the Noninterference Demonstration document (page 14) that:

> *"Although the SEMAP study projected emissions and ozone concentrations in 2018, it is estimated that a similar response to NOx and VOC reductions would occur in 2022."*

In fact, the SEMAP report itself indicates the limitations of using these data for purposes other than identical to the conditions in that analysis. Specifically, the report notes[11]:

> *"Since ozone response is nonlinear the results are most accurate for the amount of reduction used here, i.e., 30% of either NOx or VOC emissions. Caution should be exercised if the results are used for other purposes, for example in attempts to calculate the responses to other levels of emission reductions, especially those larger than 30%, or responses to combined NOx and VOC reductions. An extreme attempt might be to extrapolate the results to 100% and calculate interstate contributions. The nonlinear nature of the relation between ozone and NOx or VOC emissions should be kept in mind in such interpretations of the results. Any such attempt can only be a first estimate and should be followed by simulations of the actual emission reduction case."*

This caveat to the SEMAP results is clear in noting that (1) the sensitivity factors generated from the analysis are most accurate for reducing NOx or VOC emissions across all categories across the entire state by 30%, (2) caution should be exercised if the results are to be used for purposes other than the original intent of the analysis, (3) using the sensitivity factors should only be considered a first estimate and not a final application of the emission change, and (4) an actual emission reduction scenario and air quality modeling simulation should be conducted with the strategy outlined.

TDEC has made no documented effort to follow this guidance from the SEMAP report and from where the ozone sensitivity factors were taken.

It is my recommendation that TDEC consider using alternate methods and air quality modeling to determine the air quality impact of removing Middle Tennessee's I/M program.

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10 https://www.tn.gov/content/dam/tn/environment/air/documents/publicnotices/apc_SIP_IM_Removal_Middle_TN_08-28-19.pdf. Page E-6.

11 http://semap.ce.gatech.edu/sites/default/files/files/SEMAP-Revised-Final-Report_Final.pdf. Page 5-1.

TDEC-APC Comment: The TDEC-APC acknowledges that trying to use the scaling analysis with percentage changes well above 30% would yield erroneous results, as stated in the SEMAP report. The TDEC-APC believes that scaling ratios are valid in this sensitivity analysis since the percentage change in NOx (1.9%) and VOC (1.7%) emissions due to the removal of the I/M program are less than the 30% change in NOx and VOC emissions that were modeled in the SEMAP project. The TDEC-APC was conservative in its approach since average absolute sensitivities were normalized by the emission reduction from NOx and VOC in Middle Tennessee only and not by reductions in the entire state or entire region.

Response: I believe that TDEC-APC's recognition that its use of the scaling analysis would yield erroneous results should be adequate enough for the agency to reconsider using its analysis as a weight-of evidence approach to removal of the I/M program. Even though EPA approved a separate state's weight-of-evidence analysis for a totally different region and program removal, erroneous results are erroneous results and should not be used to justify removal of an emissions reduction program that historically TDEC-APC felt so strongly to support and has impact on improving air quality in the region.

I also refer back to the previous comment for concerns in the difference between TDEC-APC's supporting analysis for the noninterference demonstration compared to Georgia's more complete analysis.

7. **Calculations Show Onroad Emissions From Tennessee Have The Greatest Ozone Formation Potential**

By using the SEMAP ozone sensitivity factors, TDEC makes an assumption that each ton of a pollutant precursor emission has an equal impact on air quality as compared to every other ton of the same pollutant precursor, regardless of emission source. Recent modeling on this subject demonstrates that local motor vehicle source emissions have significantly greater impact on local air quality compared to all other source categories and regions.

Assuming that non-linear ozone formation and the use of an older modeling platform and associated emission projections were to be acceptable approaches to reviewing the impact of air quality change resulting from removal of the I/M program, recent category-specific source apportionment analyses conducted elsewhere by Alpine indicate that NOx emissions from Tennessee's motor vehicle source category have a much greater impact on local air quality than estimated by TDEC.

In the statement from TDEC's website presented above, the following sentence has significant relevance to the review here:

> *"But in numerous cities across the country, the personal automobile is the single greatest polluter, as emissions from millions of vehicles on the road add up."*

Using methods previously established under other work[12], Alpine has reviewed the recent EPA modeling platform used in the Cross-State Air Pollution Rule (CSAPR) Close-Out modeling and developed ozone source apportionment results and relationships between State-source category specific ozone source apportionment modeling and the seasonal NOx emissions used to develop the ozone concentrations. We used the Comprehensive Air quality Model with eXtensions/Ozone Source Apportionment Technology[13] (CAMx/OSAT) technique to quantify the contribution of 2023 base case NOx and VOC emissions from anthropogenic source categories in each region to projected 2023 ozone concentrations at ozone monitoring sites based on EPA's CSAPR "Closeout" base case scenario from EPA's 2011/2023en modeling platform.

This analysis is important as the results provide indicators of relative contribution of source regions (states) and categories (e.g., motor vehicle) NOx and VOC emissions to downwind monitor ozone concentrations. Our findings for the 2023 simulation at Middle Tennessee monitors are presented in Figures 14 through 17 below.

Each figure presents the relative contribution of NOx and VOC emissions to the modeled ozone concentration at the presented receptor. The relative height of the bars indicates the source region (x-axis) of contribution with taller bars indicating greater relative contribution. The individual colored segments of each bar (e.g., red indicating motor vehicles) indicate the relative contribution of source categories within each region to the monitor's modeled ozone concentration.

In all cases listed in the following four Figures, emissions from motor vehicle sources contribute the greatest relative concentration from U.S. anthropogenic emissions to the four monitors presented (e.g., red portion of bar from Tennessee). Based on the understanding of local impact from mobile sources, it could also be estimated that more localized reductions (e.g., Middle Tennessee counties only) would have an even greater relative impact on ozone concentrations per ton than a statewide estimation.

Note that the blue "BC" bar indicates contribution from emissions generated from boundary condition sources that include, but are not limited to, concentrations transported into the national modeling domain (e.g., international transport, stratospheric intrusion, domain initialization conditions) and are not controllable by U.S. regulation.

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12 http://midwestozonegroup.com/files/RelativeImpactofStateandSourceCategoryNOxEmissionsonDownwindMonitorsIdentifiedUsingthe2017CrossStateAirPollutionRuleModelingPlatform.pdf

13 http://www.camx.com/files/camxusersguide_v6-40.pdf

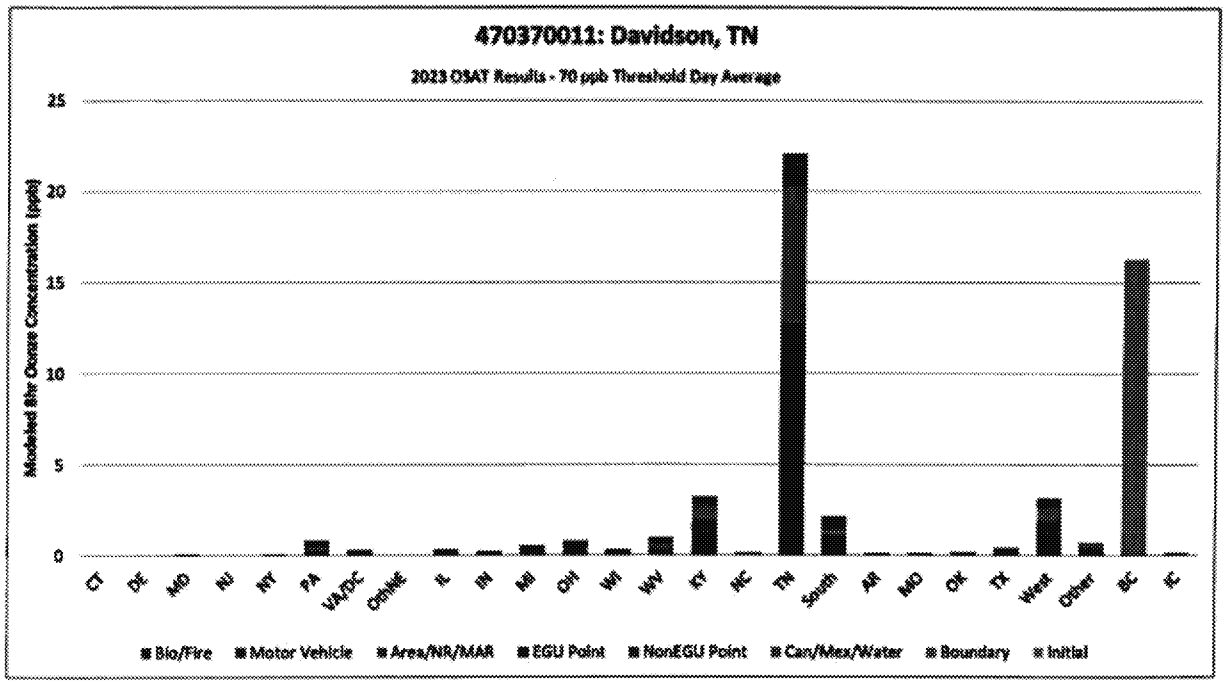

Figure 14. Relative contribution of ozone concentration (ppb) from source region and category combinations for East Health monitor.

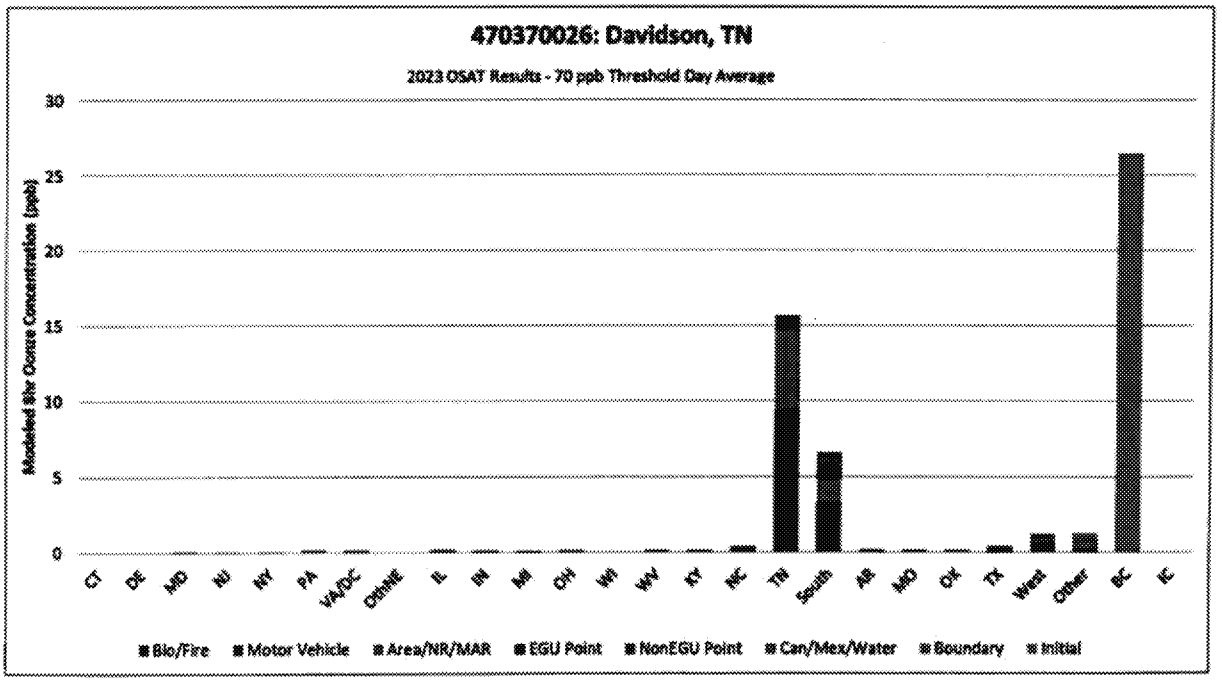

Figure 15. Relative contribution of ozone concentration (ppb) from source region and category combinations for Percy Priest Dam monitor.

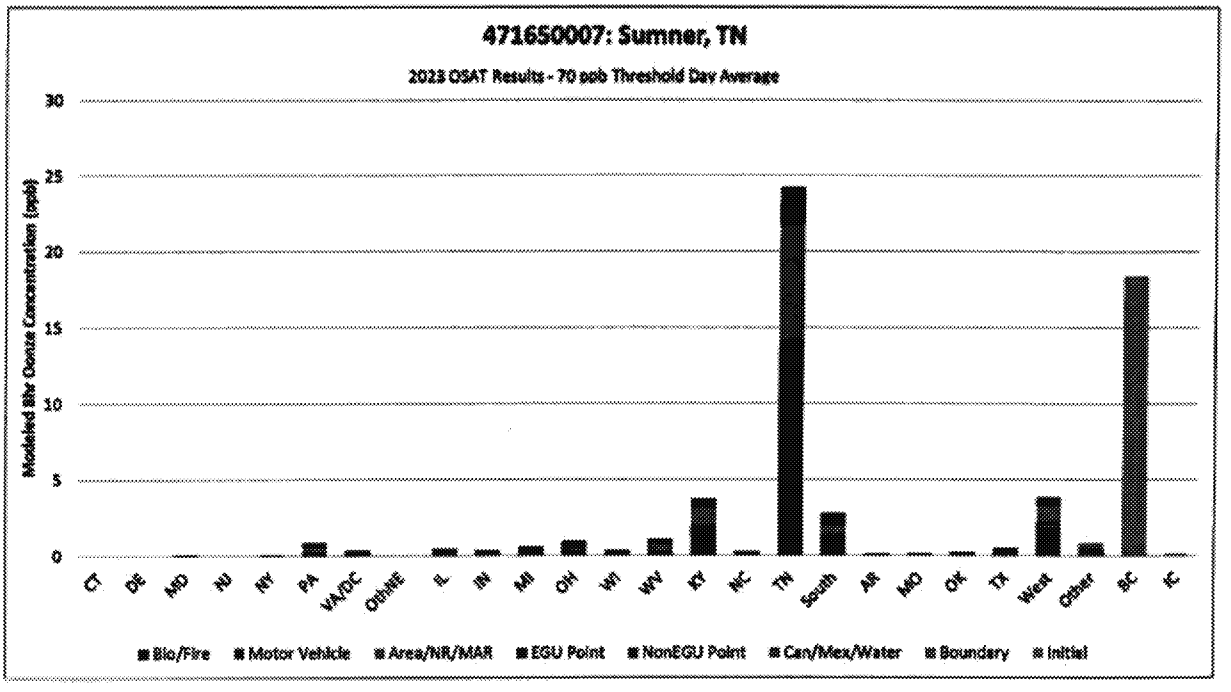

Figure 16. Relative contribution of ozone concentration (ppb) from source region and category combinations for Hendersonville Ozone Site at Old Hickory Dam.

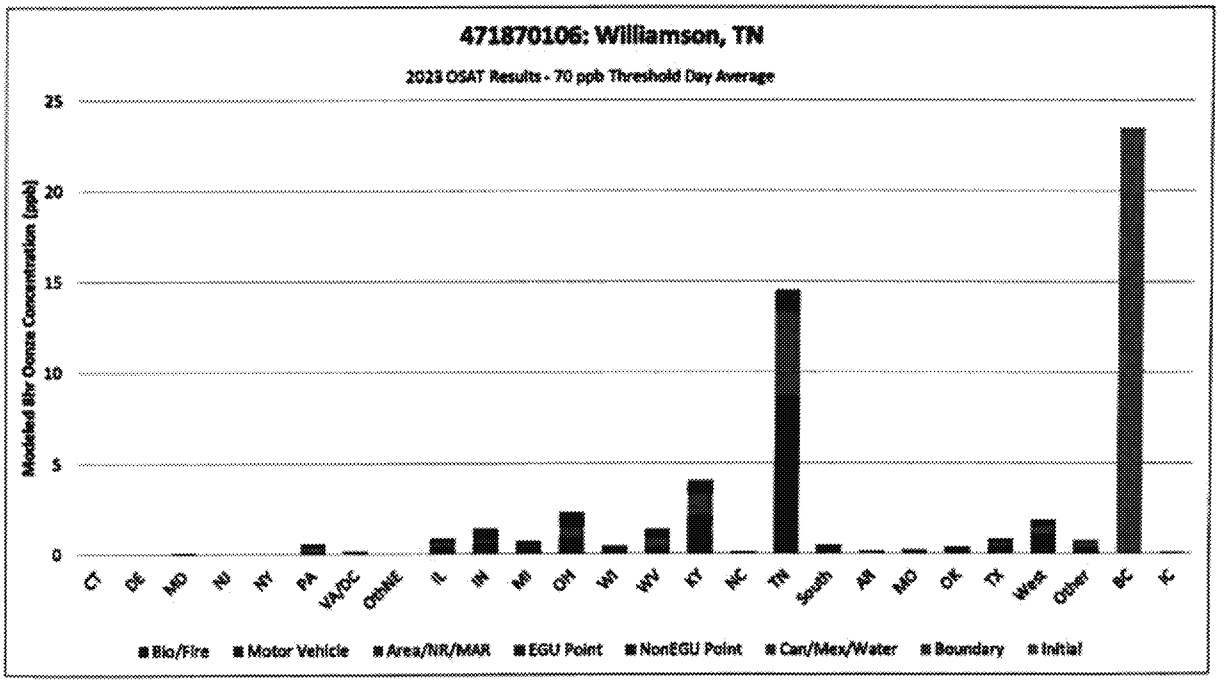

Figure 17. Relative contribution of ozone concentration (ppb) from source region and category combinations for Fairview Middle School monitor.

Furthermore, using these same source apportionment results and monthly, county, and source category specific emissions published by EPA, we developed relational "impact factors" (units of ppb/ton). We define this "impact factor" as representative of the relative contribution of modeled emissions (tons) to resultant ozone concentrations (in ppb), similar to TDEC's used SEMAP ozone sensitivity factor.

In Alpine's analysis, using updated emissions, projections, and models, we find that the relative impact of NOx emissions from mobile sources in Tennessee have factors significantly higher than most other regional-category combinations, leading us to conclude that motor vehicle and nonroad source emissions have the greatest impact on ozone concentrations in the Middle Tennessee region at the monitors reviewed.

The following four figures present the graphical results of our analysis for four Middle Tennessee monitors (presented above) with representation by state and major source sector of the impact factor calculation for the 2023 projection simulation. In all cases, either the emissions from motor vehicle sources from Tennessee (red bar) or contributions from the nonroad mobile source sector (portion of green bar) are visibly greater in relative contribution impact than any other state or category.

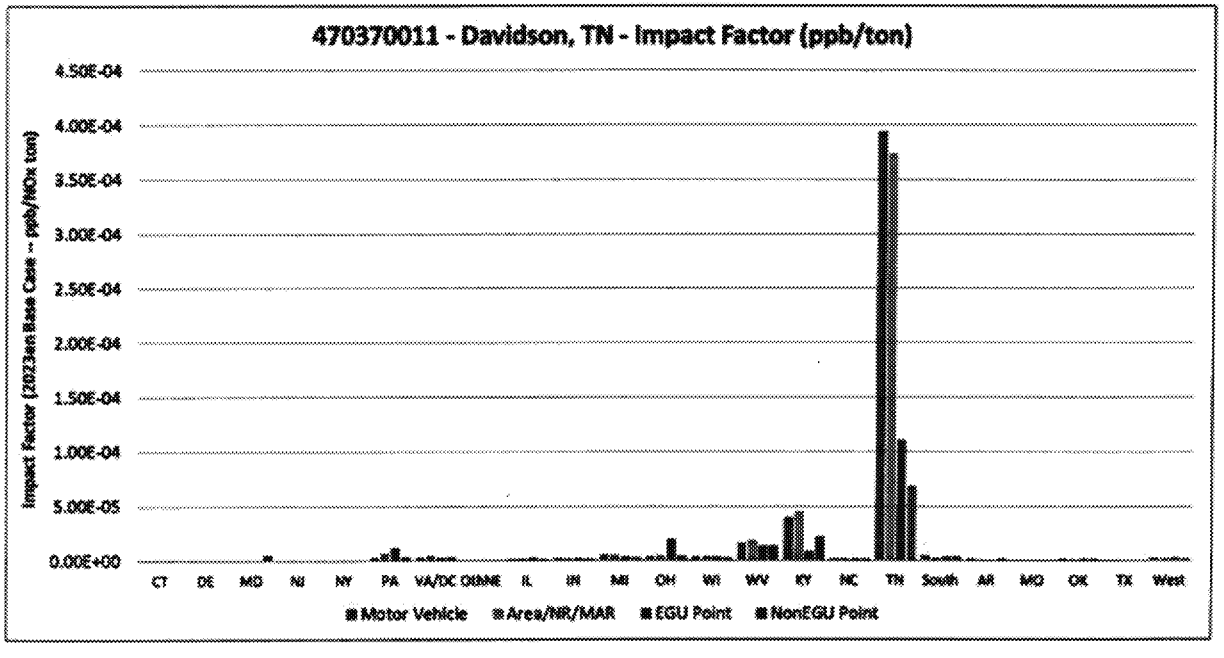

Figure 18. Impact factor calculation (ppb/ton) from source region and category combinations for East Health monitor.

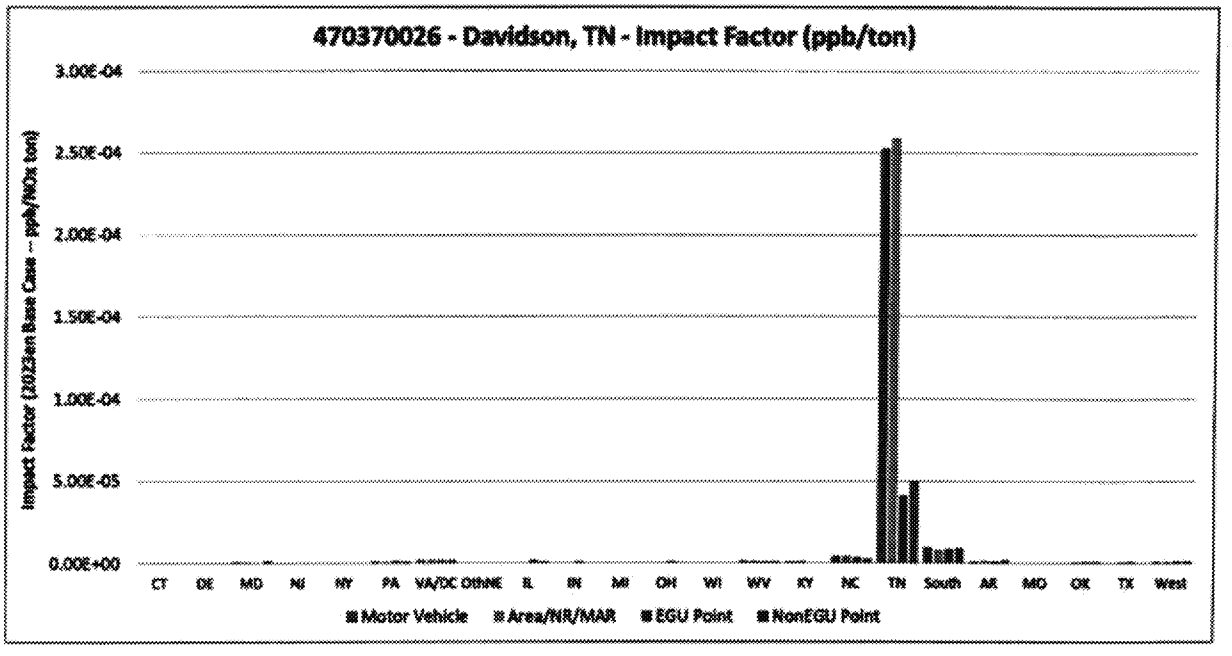

Figure 19. Impact factor calculation (ppb/ton) from source region and category combinations for Percy Priest Dam monitor.

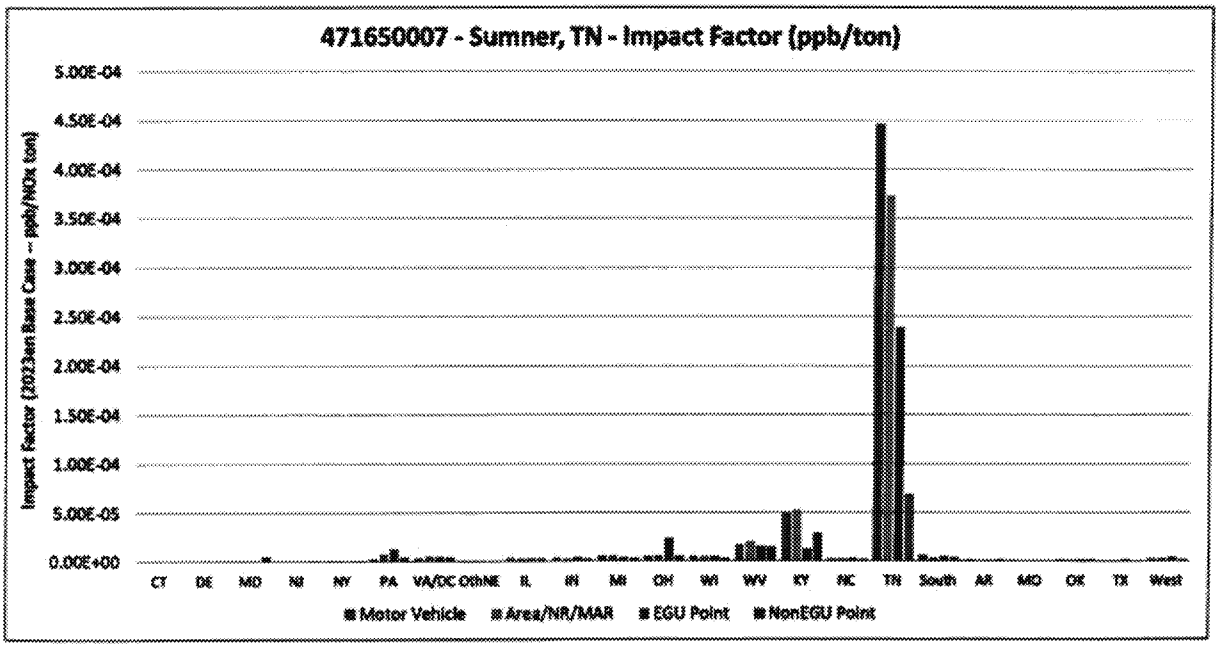

Figure 20. Impact factor calculation (ppb/ton) from source region and category combinations for Hendersonville Ozone Site at Old Hickory Dam.

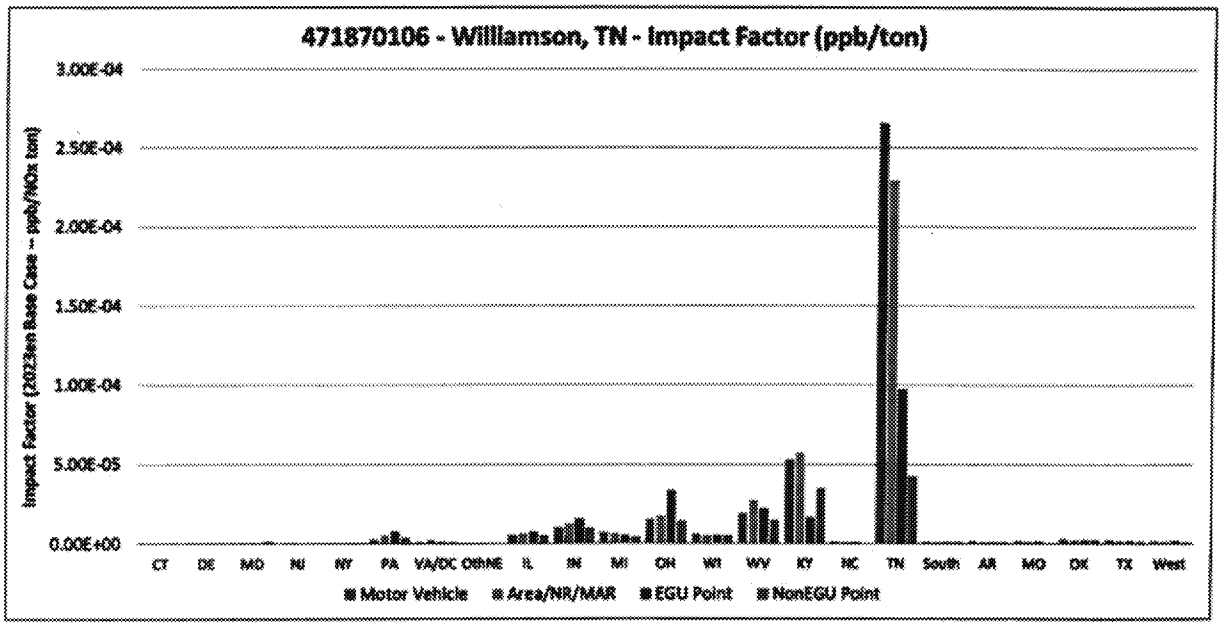

Figure 21. Impact factor calculation (ppb/ton) from source region and category combinations for Fairview Middle School monitor.

Using the results of these recent state and source category specific source contribution modeling analyses, I believe that the ozone sensitivity factors used by TDEC to estimate the impacts of the removal of the I/M program in the Middle Tennessee domain are inapplicable to current conditions based on TDEC's generic calculation and brute force application, and that actual air quality modeling is necessary to estimate the air quality impact of this action.

It is my recommendation that TDEC consider using alternate methods and air quality modeling to determine the air quality impact of removing Middle Tennessee's I/M program. Absent the decision to run an air quality simulation, it is my recommendation that should TDEC consider using an "impact factor"-like application to determine the impact of the removal of the I/M program in Middle Tennessee, it should use county and motor vehicle specific factors to make this first step assessment.

TDEC-APC Comment: The TDEC-APC used the "impact factors" displayed in the Alpine report to calculate the projected increase in ozone due to the elimination of the I/M program. When these results were compared, the resulting increase in ozone from Alpine's "impact factors" are actually less than the increase in ozone that were calculated using TDEC-APC's sensitivity analysis approach.

Response: I appreciate TDEC-APC's consideration of use of alternate sensitivity factors to those determined to give erroneous results in its original study. I note that in my original comments, I did recommended that TDEC-APC consider using alternate methods and air quality modeling to determine the air quality impact of removing Middle Tennessee's I/M program. Absent the decision to run an air quality simulation (which appears to be the case here), it was my recommendation that should TDEC consider using an "impact factor"-like application to determine the impact of the removal of the I/M

program in Middle Tennessee, it should use county and motor vehicle specific factors to make this first step assessment.

Instead, TDEC-APC used the pre-generated state-level impact factor values referenced by me and that I note are not consistent with the county-based analysis (or the most current emissions and emission projection estimates) recommended to be applied. The uniqueness of highway vehicle emissions in the Middle Tennessee area are likely significantly different that the mix of highway vehicle emissions in the entire state of Tennessee (as presented in Alpine's referenced report).

I continue to recommend that TDEC-APC consider using an "impact factor"-like application to determine the impact of the removal of the I/M program in Middle Tennessee, and it should use county and motor vehicle specific factors to make this first step assessment.

8. EPA Is Rolling Back Other Regulations That Will Likely Increase Emissions

TDEC includes in its assumptions that existing non-mobile control programs will remain in force during the foreseeable future. As has been demonstrated by EPA, a significant number of federal air quality regulations have been "rolled back", removed from requirements, or are in the courts pending review and decision. Should these regulations be stricken from the list of required control programs, assumptions included that assume emission decreases and associated air quality improvements will be invalidated.

Multiple sources, including EPA itself, have summarized the dozens of air quality related regulatory programs that have been "rolled back", challenged in the courts, or are no longer being enforced in the past few years and that have demonstrated negative impact on air quality progress. These rules, whether related to motor vehicle and nonroad mobile sources (proposing weakening existing fuel economy standards, lifting summertime ban on ethanol-based fuel blends, etc.), electric generating utilities (proposing repeal of Clean Power Plan; Power Plant Startup, Shutdown, and Malfunction Rule; etc.), or other categories and emission sources that impact air quality in Middle Tennessee have all been part of earlier improvements in ozone and PM concentration observations in the region.

However, now that these rules have been and continue to be eliminated, air quality in the region has shown deterioration and movement towards nonattainment of the various NAAQS. Removal of yet another regional rule like the I/M program will only work to worsen air quality for the population of Nashville and the entire Middle Tennessee region.

It is my recommendation that TDEC collectively consider the impact of these additional regulations before removing the I/M program from Middle Tennessee.

TDEC-APC Comment: The TDEC-APC believes that the commenter is overstating the facts by stating that a "significant number of federal air quality regulations have been "rolled back", removed from requirements, or are in the courts pending review and decision." The Noninterference Demonstration is a demonstration for the removal of one regulation, the I/M regulation, and is not intended to show the

effects of speculative regulatory changes that may be made by the EPA or federal courts for which Tennessee has no control.

Response: All programs that impact the air shed in the Middle Tennessee area should be considered when estimating what the incremental impacts of the removal of the I/M program would have on ozone concentrations. EPA has shown that air packets from as far away as California or New York can have impact on air quality in Tennessee[14]. As a result, any regulation that has an impact to increase emissions could have an impact on Middle Tennessee air quality.

According to a report prepared by New York University Law School's State Energy and Environmental Impact Center[15], recent environmental rollbacks under the direction of the current administration could significantly increase greenhouse gas emissions and lead to thousands of extra deaths from poor air quality every year. Below is a list of 25 policy changes, classified into two categories: rules that were officially reversed and rollbacks still in progress.

Completed

1. Canceled a requirement for oil and gas companies to report methane emissions[16].

2. Revised and partially repealed an Obama-era rule limiting methane emissions on public lands, including intentional venting and flaring from drilling operations[17].

3. Replaced the Obama-era Clean Power Plan, which would have set strict limits on carbon emissions from coal- and gas-fired power plants, with a new version that would let states set their own rules[18].

4. Revoked California's power to set its own more stringent emissions standards for cars and light trucks[19].

5. Repealed a requirement that state and regional authorities track tailpipe emissions from vehicles traveling on federal highways[20].

6. Loosened a Clinton-era rule designed to limit toxic emissions from major industrial polluters[21].

7. Revised a permiting program designed to safeguard communities from increases in pollution from new power plants to make it easier for facilities to avoid emissions regulations[22].

8. Amended rules that govern how refineries monitor pollution in surrounding communities[23].

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[14] https://www.epa.gov/interstate-air-pollution-transport/what-interstate-air-pollution-transport
[15] https://www.law.nyu.edu/sites/default/files/climate-and-health-showdown-in-the-courts.pdf
[16] https://www.epa.gov/newsreleases/epa-withdraws-information-request-oil-and-gas-industry
[17] https://www.nytimes.com/2018/09/18/climate/trump-methane-rollback.html
[18] https://www.nytimes.com/2019/06/19/climate/epa-coal-emissions.html
[19] https://climate.law.columbia.edu/content/epa-revokes-californias-authority-set-climate-protective-vehicle-emissions-standards
[20] https://usa.streetsblog.org/2018/05/31/trump-admin-snuffs-out-climate-progress-at-u-s-dot/
[21] https://www.vox.com/energy-and-environment/2018/1/26/16936104/epa-trump-toxic-air-pollution
[22] https://eelp.law.harvard.edu/2018/12/new-source-review/

9. Stopped enforcing a 2015 rule that prohibited the use of hydrofluorocarbons, powerful greenhouse gases, in air-conditioners and refrigerators[24].

10. Weakened an Obama-era rule meant to reduce air pollution in national parks and wilderness areas[25].

11. Weakened oversight of some state plans for reducing air pollution in national parks[26].

12. Directed agencies to stop using an Obama-era calculation of the "social cost of carbon" that rulemakers used to estimate the long-term economic benefits of reducing carbon dioxide emissions[27].

13. Withdrew guidance that federal agencies include greenhouse gas emissions in environmental reviews. But several district courts have ruled that emissions must be included in such reviews[28].

14. Lifted a summertime ban on the use of E15, a gasoline blend made of 15 percent ethanol. (Burning gasoline with a higher concentration of ethanol in hot conditions increases smog.)[29]

15. Changed rules to allow states and the E.P.A. to take longer to develop and approve plans aimed at cutting methane emissions from existing landfills[30].

16. Revoked an Obama executive order that set a goal of cutting the federal government's greenhouse gas emissions by 40 percent over 10 years[31].

In Process

17. Proposed relaxing Obama-era requirements that companies monitor and repair methane leaks at oil and gas facilities[32].

18. Proposed weakening Obama-era fuel-economy standards for cars and light trucks[33].

19. Submitted notice of intent to withdraw the United States from the Paris climate agreement. The process of withdrawing cannot be completed until November 2020[34].

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[23] https://eelp.law.harvard.edu/2018/12/petroleum-refinery-sector-rule-neshaps-nsps/
[24] https://insideclimatenews.org/news/27062018/hfcs-global-warming-climate-pollution-lawsuit-trump-epa-regulations-kigali-amendment
[25] https://www.eenews.net/eenewspm/2019/08/20/stories/1061013699
[26] https://eelp.law.harvard.edu/2018/04/regional-haze-state-implementation-plans/
[27] http://www.sciencemag.org/news/2017/08/trump-s-attack-social-cost-carbon-could-end-hurting-his-fossil-fuel-push
[28] https://www.eenews.net/greenwire/stories/1060052285
[29] https://www.nytimes.com/2019/05/31/climate/trump-ethanol-fuel-ban.html
[30] https://eelp.law.harvard.edu/2017/09/municipal-solid-waste-landfill-new-source-performance-standards-and-emissions-guidelines/
[31] http://columbiaclimatelaw.com/climate-deregulation-tracker/president-issues-executive-order-revoking-federal-sustainability-plan/
[32] https://www.nytimes.com/2019/08/29/climate/epa-methane-greenhouse-gas.html
[33] https://www.nytimes.com/2018/08/02/climate/trump-auto-emissions-california.html?module=inline
[34] https://www.nytimes.com/2019/11/04/climate/trump-paris-agreement-climate.html

20. Proposed eliminating Obama-era restrictions that in effect required newly built coal power plants to capture carbon dioxide emissions[35].

21. Proposed a legal justification for weakening an Obama-era rule that limited mercury emissions from coal power plants[36].

22. Proposed revisions to standards for carbon dioxide emissions from new, modified and reconstructed power plants[37].

23. Began a review of emissions rules for power plant start-ups, shutdowns and malfunctions. In April, the E.P.A. proposed reversing a requirement that Texas follow the emissions rule, with implications for 35 other states[38].

24. Proposed the repeal of rules meant to reduce leaking and venting of hydrofluorocarbons from large refrigeration and air conditioning systems[39].

25. Opened for comment a proposal limiting the ability of individuals and communities to challenge E.P.A.-issued pollution permits before a panel of agency judges[40].

Summary of Recommendations

The Tennessee Department of Environment and Conservation , Air Pollution Control Division has requested that the United States Environmental Protection Agency remove the requirement for an Inspection and Maintenance program for the five-county Middle Tennessee area, which includes Davidson, Sumner, Wilson, Rutherford, and Williamson Counties, from Tennessee's State Implementation Plan. To support this request, TDEC has conducted a demonstration designed to show that removing the I/M program from Tennessee's SIP will not interfere with attainment or maintenance of various air quality NAAQS.

Based on a technical review conducted of the request for removal and associated documentation, I have concluded that the Noninterference Demonstration is inadequate to support the conclusion that removal of the I/M program from the SIP will not interfere with attainment of the NAAQS. In addition, I have made the following recommendations that are further detailed above.

- It is my recommendation that TDEC conduct a full air quality simulation of the impact of removal of the I/M program in Middle Tennessee before making any determination of its interference effect.

---

[35] https://www.nytimes.com/2018/12/04/climate/epa-coal-carbon-capture.html
[36] https://www.nytimes.com/2018/12/28/climate/mercury-coal-pollution-regulations.html
[37] https://eelp.law.harvard.edu/2017/09/ghg-new-source-performance-standards-for-power-plants/
[38] https://eelp.law.harvard.edu/2017/09/power-plant-startup-shutdown-and-malfunction-rule/
[39] https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2018/09/21/the-energy-202-trump-s-epa-is-targeting-rules-for-yet-another-greenhouse-gas/5ba3eda31b326b7c8a8d158e/?utm_term=.09df110e1f6c
[40] https://www.federalregister.gov/documents/2019/12/03/2019-24940/modernizing-the-administrative-exhaustion-requirement-for-permitting-decisions-and-streamlining

- It is my recommendation that the most current modeling platform and associated emission projections be used in this air quality simulation to update the I/M analysis conducted by TDEC to account for improvements in emission estimates.
- It is my recommendation that TDEC conduct this air quality modeling using a meteorological and associated base year inventory that meets the requirements of EPA guidance for the determination of impact of control strategies and air quality response.
- It is my recommendation that should TDEC still consider alternate methods to air quality modeling, that it use sensitivity factors based on source category distribution assumptions consistent with today's actual category and emissions mix to estimate the impact of removing Middle Tennessee's I/M program.
- It is my recommendation that TDEC consider the collective impact of additional regulations currently rolled back or in courts pending rollback decisions, before removing the I/M program from Middle Tennessee.

Message

From: Kabanda, Thierry [Kabanda.Thierry@epa.gov]
Sent: 1/25/2021 8:30:40 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
CC: Rakosnik, Delaney [rakosnik.delaney@epa.gov]
Subject: FW: AIM Act Overview briefing 1/26 @3pm
Attachments: AIM Act briefing -overview for jgoffman -01-26-2021 final.pptx; image003.png

Good afternoon,

Please see attached for tomorrow's 3PM meeting.

From: Murphy, Tina <Murphy.Tina@epa.gov>
Sent: Monday, January 25, 2021 3:28 PM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: Newberg, Cindy <Newberg.Cindy@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>; Clarke, Deirdre <clarke.deirdre@epa.gov>; Garner, Dorothy <Garner.Dorothy@epa.gov>
Subject: AIM Act Overview briefing 1/26 @3pm

Dear OAR Leadership Team,

Please find attached "AIM Act Overview briefing." Scheduled with Joe Goffman for Tuesday, January 26th (tomorrow): 3-3:45 p.m.

Thank you.

Message

From: Rakosnik, Delaney [rakosnik.delaney@epa.gov]
Sent: 1/26/2021 5:45:44 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]
Subject: RE: Meeting with David Doniger (Climate and Clean Energy Program) re: Power Plant Plans & CBD NAAQS Petition

Hi Joe - You are all set for 3pm.

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Tuesday, January 26, 2021 12:32 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Fwd: Meeting with David Doniger (Climate and Clean Energy Program) re: Power Plant Plans & CBD NAAQS Petition

Sent from my iPhone

Begin forwarded message:

> **From:** "Doniger, David" <ddoniger@nrdc.org>
> **Date:** January 26, 2021 at 12:19:47 PM EST
> **To:** "Goffman, Joseph" <Goffman.Joseph@epa.gov>
> **Cc:** "Carbonell, Tomas" <Carbonell.Tomas@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>
> **Subject: Re: Meeting with David Doniger (Climate and Clean Energy Program) re: Power Plant Plans & CBD NAAQS Petition**
>
> Hi Joe,
>
> Sorry, could you clarify, are we meeting at 3 or 4? I got two invitations.
>
> Sent from my iPhone
>
> > On Jan 26, 2021, at 12:12 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:
> >
> > _____
> >
> > Microsoft Teams meeting
> >
> > Join on your computer or mobile app
> >
> > Click here to join the meeting<https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2Fl%2Fmeetup-join%2F19%253ameeting_NWFiMGRmYjQtM2QwMi00NWIxLTg1MmEtZGUwYmE5ODU5ZTM3%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252288b378b3-6748-4867-acf9-76aacbeca6a7%2522%252c%2522Oid%2522%253a%252210a26f4e-5526-467e-a2a3-44c740d2aa80%2522%257d&data=04%7C01%7CGoffman.Joseph%40epa.gov%7C7

99627c4aaaf4929be0308d8c21e9411%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637472783876940927%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=uFhH25T7igAe%2FnFUekr%2BU%2FrEfoA%2Fkagi9SzoGSfggpU%3D&reserved=0>

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Learn More<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Faka.ms%2FJoinTeamsMeeting&data=04%7C01%7CGoffman.Joseph%40epa.gov%7C799627c4aaaf4929be0308d8c21e9411%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637472783876940927%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=ZbIUp53qE1MfrZKinj84RZhechNjXdlQ4woaBi1RCM%3D&reserved=0> | Meeting options<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fteams.microsoft.com%2FmeetingOptions%2F%3Forganizerid%3D10a26f4e-5526-467e-a2a3-44c740d2aa80%26tenantId%3D88b378b3-6748-4867-acf9-76aacbeca6a7%26threadId%3D19_meeting_NWFiMGRmYjQtM2QwMi00NWIxLTg1MmEtZGUwYmE5ODU5ZTM3%40thread.v2%26messageId%3D0%26language%3Den-US&data=04%7C01%7CGoffman.Joseph%40epa.gov%7C799627c4aaaf4929be0308d8c21e9411%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637472783876940927%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=UT9J4DgEGOYo%2BTn2I%2FnmfxwLoRjlsC%2Fr4iLyu2ZVRxE%3D&reserved=0>

_____

Message

From: POLITICO Pro Energy [alert@email.politicopro.com]
Sent: 3/15/2021 7:49:18 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: EPA reconsidering Trump ozone, particulate standards

EPA reconsidering Trump ozone, particulate standards

By Alex Guillén

03/15/2021 03:48 PM EDT

EPA is reconsidering the Trump administration's December regulations that left unchanged the national air quality standards for ground-level ozone and particulate matter, a top agency official said on Monday.

Newly arrived Administrator Michael Regan will soon decide whether to continue those reconsiderations or to focus instead on the next round of regulatory reviews.

Background: EPA said in separate rulemakings near the end of the Trump administration that it would retain, without revision, the National Ambient Air Quality Standards for ozone (Reg. 2060-AU40) and particulate matter (Reg. 2060-AS50). Environmentalists had argued both should be tightened, but then-Administrator Andrew Wheeler cited uncertainties about the public health benefits of strengthening those standards to keep them as is.

Details: During a virtual gathering of the Clean Air Act Advisory Committee, member Andrew Hoekzema asked whether EPA is reconsidering the two standards.

"The answer is yes," replied Joe Goffman, EPA's acting air chief. "But I can't elaborate on it in any way that would be particularly satisfying because, as you know, sooner or later, decisions concerning the NAAQS become an administrator-level decision and we certainly haven't had time to engage in a robust way with Administrator Regan."

Goffman said he will soon brief Regan on the options for proceeding with a review of the NAAQS rules, which Regan will have to balance with other demands on EPA's resources. But, Goffman admitted, "both NAAQS decisions are getting a lot of attention right now."

Context: The reconsideration of a NAAQS standard led to one of the biggest environmental regulatory controversies of Barack Obama's presidency and could influence Regan's decision of what to do now.

The Obama EPA similarly reconsidered the George W. Bush administration's 2008 ozone rule, which set the standard at 75 parts per billion. Then-Administrator Lisa Jackson proposed lowering it to the 60 to 70 ppb range. But in 2011, President Barack Obama quashed the rulemaking, citing a need to relieve "regulatory burdens." Environmentalists were enraged by the reversal and alleged it was a political calculation ahead of Obama's 2012 reelection campaign.

With a legal mandate to review the NAAQS standards regulatory, EPA in 2015 did lower the standard to 70 ppb, which many environmentalists argued was still too weak. A reconsideration likely would take a year or two to complete. But the Biden EPA could instead decide to keep the rules and move into a new round of

reviews with a goal of completing them by 2025 or 2026, putting the final decision into the next presidential term.

To view online:
https://subscriber.politicopro.com/article/2021/03/epa-reconsidering-trump-ozone-particulate-standards-3987578

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USA

Message

From: Nishida, Jane [Nishida.Jane@epa.gov]
Sent: 1/20/2021 10:42:28 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]
Subject: RE: Federal Register
Attachments: Administrator Weekly 011421.pdf

Thanks Joe.

I am attaching the most recent Weekly Reports that the NPMs and Regions send to the Administrator's Office (AO), included is Office of Policy (OP)'s list of actions sent to OMB (see page 33).

Dan – as I mentioned in our earlier call, think it would be helpful to continue these Weekly Reports. Don't think there will not be one this week, because of the transition.

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Wednesday, January 20, 2021 5:28 PM
To: Utech, Dan <Utech.Dan@epa.gov>; Nishida, Jane <Nishida.Jane@epa.gov>
Subject: FW: Federal Register

EPA Guidance on the list

From: Goffman, Joseph <jgoffman@law.harvard.edu>
Sent: Wednesday, January 20, 2021 5:17 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: Fwd: Federal Register

Sent from my iPhone

Begin forwarded message:

> **From:** "Goffman, Joseph" <jgoffman@law.harvard.edu>
> **Date:** January 20, 2021 at 9:36:42 AM EST
> **To:** GOFFMAN.JOSEPH@epa.gov
> **Subject: Fwd: Federal Register**
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Lazarus, Richard" <lazarus@law.harvard.edu>
> > **Date:** January 20, 2021 at 9:34:10 AM EST
> > **To:** "Goffman, Joseph" <jgoffman@law.harvard.edu>, jgoffman@jbrpt.org, cgiles@jbrpt.org
> > **Subject: FW: Federal Register**

Here is the full listing of relevant environmental items to be published tomorrow in the Federal Register, but in effect is in final format today. Today is a holiday, which is why nothing formally today. Odd but seems to be true that they therefore do tomorrow today. I don't get it.

In all events, nothing of obvious concern. I expect that is because the outgoing Trump folks were worried that the new Administration might be able to do something with them, so held back on publishing anything in the FR "today," which is "tomorrow."

Published Fed. Reg. for the 1/21 issue

DOJ

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act, 86 Fed. Reg. 6,366 (Jan. 21, 2021).
Notice: https://www.govinfo.gov/content/pkg/FR-2021-01-21/pdf/2021-01233.pdf
Consent decree: https://www.justice.gov/enrd/consent-decree/file/1354131/download

EPA

Guidance
Applying the Supreme Court's County of Maui v. Hawaii Wildlife Fund Decision in the Clean Water Action Section 402 National Pollutant Discharge Elimination System Permit Program, 86 Fed. Reg. 6,321 (Jan. 21, 2021).
Notice: https://www.govinfo.gov/content/pkg/FR-2021-01-21/pdf/2021-01254.pdf
Guidance Memorandum: https://www.epa.gov/sites/production/files/2021-01/documents/final_ow_maui_guidance_document_-_signed_1.14.21.pdf

Risk Evaluation
C.I. Pigment Violet 29; Final Toxic Substances Control Act (TSCA) Risk Evaluation, 86 Fed. Reg. 6,322 (Jan. 21, 2021).
Notice: https://www.govinfo.gov/content/pkg/FR-2021-01-21/pdf/2021-01229.pdf
The actual risk evaluation doesn't appear to have been posted yet

Two updates mentioned yesterday re: particular oil and gas lease sales - probably not major but wanted to flag just in case

Interior / BLM
Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 119276, New Mexico, 86 Fed. Reg. 6,362 (Jan. 21, 2021).
https://www.govinfo.gov/content/pkg/FR-2021-01-21/pdf/2021-01256.pdf

Interior / BOEM
Gulf of Mexico, Outer Continental Shelf (OCS), Oil and Gas Lease Sale 257, 86 Fed. Reg. 6,365 (Jan. 21, 2021).
https://www.govinfo.gov/content/pkg/FR-2021-01-21/pdf/2021-01251.pdf
Record of Decision: https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/regional-leasing/gulf-mexico-region/Lease-257-ROD.pdf

Pre-Publication (same items as yesterday)

Commerce / NOAA / NMFS - Temporary Rule
Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska - to be published in Fed Reg. 1/25/2021; to be codified at 50 C.F.R. pt. 679
https://public-inspection.federalregister.gov/2021-01434.pdf

Commerce / NOAA / NMFS - Temporary Rule
Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Pot Catcher/ Processors in the Bering Sea and Aleutian Islands Management Area - to be published in Fed. Reg. 1/22/2021; to be codified at 50 C.F.R. pt. 679
https://public-inspection.federalregister.gov/2021-01354.pdf

Interior / BOEM - Withdrawal of proposed rule
Risk Management, Financial Assurance and Loss Prevention - to be published in Fed. Reg. 1/22/2021; to be codified at 30 C.F.R. pts. 250 and 290
https://public-inspection.federalregister.gov/2021-01293.pdf

Interior / NPS
Final Rule
Commercial Visitor Services; Concession Contracts - to be published in Fed. Reg. 1/22/2021; to be codified at 36 C.F.R. pt. 51
https://public-inspection.federalregister.gov/2021-00789.pdf

Proposed Rule
Visitor Experience Improvements Authority Contracts - to be published in Fed. Reg. 1/22/2021; to be codified at 36 C.F.R. pt. 52
https://public-inspection.federalregister.gov/2021-01147.pdf

From: Revesz, Richard [mailto:Revesz@exchange.law.nyu.edu]
Sent: Wednesday, January 20, 2021 8:10 AM
To: David Hayes <dhayes@jbrpt.org>; Lazarus, Richard <lazarus@law.harvard.edu>
Cc: alesnak@jonesday.com
Subject: Re: Time sensitive

It's so interesting that the vast powers of the Presidency don't extend to stopping the publication of the Federal Register.

Ricky

From: David Hayes <dhayes@jbrpt.org>
Date: Wednesday, January 20, 2021 at 8:04 AM
To: "Lazarus, Richard" <lazarus@law.harvard.edu>
Cc: "alesnak@jonesday.com" <alesnak@jonesday.com>, "Revesz, Richard" <Revesz@exchange.law.nyu.edu>
Subject: Re: Time sensitive

The bad news is being conveyed by the top incoming politicals at OMB. Really unfortunate.

On Wed, Jan 20, 2021 at 7:42 AM Lazarus, Richard <lazarus@law.harvard.edu> wrote:

Thanks David for the notice. Will do. No doubt you are as unhappy about this as I am confounded. I would not have thought this as I in doable but routine. My only suggestion is to have someone make sure this is not some isolated bozo somewhere. It happens.

Sent from my iPad
Please excuse typos and misdirected auto correct

On Jan 20, 2021, at 7:39 AM, David Hayes <dhayes@jbrpt.org> wrote:

As an FYI, bad news from OMB about the Fed Reg. We can't pull back tomorrow's Fed Reg, so I'd appreciate your sending me relevant notices that appear in tomorrow's edition, as well as today's.

My jbrpt account should remain open as I switch over to a .gov account.

Here's what OMB said on the issue: *Because tomorrow is a holiday, we can't get the Federal Register to stop anything slated to be published on 1/21. We're working with Comms to be be prepared to explain why this is happening on the first day of the Administration. I'm happy to work with you on how to withdraw the guidance as quickly as possible.*

Thanks.

---------- Forwarded message ---------
From: **Richard Lazarus** <rlazarus@jbrpt.org>
Date: Tue, Jan 19, 2021 at 4:38 PM
Subject: Re: Time sensitive
To: Angela Lesnak <alesnak@volunteer.jbrpt.org>
Cc: David Hayes <dhayes@jbrpt.org>, Ricky Revesz <rrevesz@volunteer.jbrpt.org>

Will do. Thanks. Hope you had Dan Farber as a prof there at Berkeley. From my hometown, Urbana, IL.

On Tue, Jan 19, 2021 at 4:34 PM Angela Lesnak <alesnak@volunteer.jbrpt.org> wrote:

Please use my personal email: alesnak@berkeley.edu. Keep fighting the good fight!

AEL

Angela E. Lesnak | she/her
(218) 969-3613

On Tue, Jan 19, 2021 at 4:32 PM David Hayes <dhayes@jbrpt.org> wrote:

Thanks, Richard, Ricky and Angela!

And don't forget to send me the Fed Reg entries that appear tomorrow morning.

On Tue, Jan 19, 2021 at 4:30 PM Richard Lazarus <rlazarus@jbrpt.org> wrote:

Thanks!

On Tue, Jan 19, 2021 at 4:28 PM Ricky Revesz <rrevesz@volunteer.jbrpt.org> wrote:

Richard:

There's a typo in mine. In any event please use this alias instead:

richard.revesz@nyu.edu

It was great to communicate to you on jbrpt.org during these months and I look forward to continuing to do that on our academic e-mails.

Ricky

On Tue, Jan 19, 2021 at 4:25 PM Richard Lazarus <rlazarus@jbrpt.org> wrote:

Because all of our jbrpt emails, or at least mine, will reportedly go defunct at of around 5 today, I will send my last Fed Reg report for January 20 to your other addresses.

here are the addresses I will use. Please let me know if I should use a different address:

david.hayes@nyu.edu
Revesz@exhange.law.nyu.edu
alesnak@jonesday.com

Thanks

Richard

On Tue, Jan 19, 2021 at 12:01 PM David Hayes <dhayes@jbrpt.org> wrote:

excellent.

On Tue, Jan 19, 2021 at 11:57 AM Richard Lazarus <rlazarus@jbrpt.org> wrote:

I have now an answer for #35. The D.C. Circuit this morning granted the plaintiffs' motion for abeyance.

On Tue, Jan 19, 2021 at 11:22 AM David Hayes <dhayes@jbrpt.org> wrote:

I agree that many of the general rules also will engender localized sensitivities, but we're keeping all of them on the list.

Only looking at the ones Ricky listed to potentially drop, unless there's a near-term litigation need to keep them on the list.

Many thanks.

On Tue, Jan 19, 2021 at 11:16 AM Richard Lazarus <rlazarus@jbrpt.org> wrote:

David

I have sent an inquiry to the career DAAG who will be the Acting AAG as of tomorrow.

I will let you know as soon as I hear back. Your concerns about confirmation and site specific agency decisions strike me as apt on their face, because of their obvious geographic focus, though certain ESA rules while written generally have similar potential. A balancing act to be sure, but I hope not ultimately paralyzing.

Hopefully I will hear back soon from ENRD.

Richard

On Tue, Jan 19, 2021 at 11:12 AM Angela Lesnak <alesnak@volunteer.jbrpt.org> wrote:

Here is information as to (what I think are) the specific cases for numbers 13 and 31.

13	"Notice of Availability of the Record of Decision for the Proposed Willow Master Development Plan Project, Alaska," 85 Fed. Reg. 69351 (November 2, 2020).	Information
31	Bureau of Land Management, Normally Pressured Lance Natural Gas Development Project Record of Decision (August 27, 2018).	W. Watersh No. 1:08-cv

On Tue, Jan 19, 2021 at 11:07 AM David Hayes <dhayes@jbrpt.org> wrote:

That would be great, Richard. Many thanks.

On Tue, Jan 19, 2021 at 11:05 AM Richard Lazarus <rlazarus@jbrpt.org> wrote:

I can ask folks at ENRD. I would expect there are not, but that is the only way to know for sure. Would you like for me to do that?

On Tue, Jan 19, 2021 at 11:04 AM David Hayes <dhayes@jbrpt.org> wrote:

There is angst at high levels about including place-based RODs in this "non-exclusive" list, given nomination sensitivities. If there aren't filing deadlines within the next 30 days in these matters, we are inclined to remove them (except for #13 and #35, perhaps). Is there a way to check?

On Tue, Jan 19, 2021 at 10:53 AM Richard Lazarus <rlazarus@jbrpt.org> wrote:

Hi Ricky

Taking a quick look, here is the challenge with getting this information immediately. As you may recall, I began this project in early November, focused on identifying pending litigation in which ENRD was defending Trump Administration environmental policies. But consistent with the idea of having an EO that listed the underlying agency Trump rollbacks, by early December we abandoned the pending litigation as the denominator for our inquiry and replaced it with Trump environmental rollbacks, whether or not there was litigation. The related litigation was deleted from the new spreadsheet.

This denominator shift in focus was especially relevant to new agency actions that occurred after November 1. Several of the items you listed for inquiry occurred after November 1 and therefore our litigation tracker does not consider whether litigation was in fact brought, because that became no longer relevant to the EO focus. We anticipated litigation but, especially because we were barred by the Transition rules from contacting opposing counsel, we never learned about new filings after November 1. The most we could write was "anticipated litigation." That will be true for items, 4, 11, and 13, all of which occurred after November 1. We did not track new filings (had no resources available to do so) and do not know.

For No. 35, it was easy to quickly identify the litigation, listed below. For the others, would require more digging because the original litigation listing of all 261 cases did not identify with precise formal links all the underlying agency actions. Those were added later,

when we created a new spreadsheet with the agency action denominator, which was after we were asked to eliminate the precise litigation reference. I expect there is litigation for all three -- 15, 31, and 35 -- because it was the presence of litigation that brought the agency actions to our attention in the first instance, but I cannot establish that immediately for all three.

Richard

For #35

Interior	*The Wilderness Society v. Bernhardt*	1:20-cv-01176

On Tue, Jan 19, 2021 at 10:34 AM Angela Lesnak <alesnak@volunteer.jbrpt.org> wrote:

I'll take a look now. Thanks!

On Jan 19, 2021, at 10:29 AM, Richard Lazarus <rlazarus@jbrpt.org> wrote:

I will also take a look. I still have access to my original underlying spreadsheet for a few hours longer.

RIchard

On Tue, Jan 19, 2021 at 10:27 AM Ricky Revesz <rrevesz@volunteer.jbrpt.org> wrote:

Angela:

I would be grateful if could let me know, right away if possible, from Richard's spreadsheet or otherwise, whether any of items 4, 11, 13, 15, 31, 35 on the Interior list are currently in litigation.

Ricky

Message

From: POLITICO Pro Financial Services [alert@email.politicopro.com]
Sent: 1/25/2021 10:04:45 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Gensler clashed with SEC investor-advice rule in sign of changes to come at regulator

Gensler clashed with SEC investor-advice rule in sign of changes to come at regulator

By Kellie Mejdrich

01/25/2021 05:00 AM EST

When Gary Gensler chaired a Maryland financial protection commission in 2019, the group called on state lawmakers to adopt a strict standard to prohibit conflicts of interest by professionals offering investment advice.

What was striking about Gensler's move is that it came just before the Securities and Exchange Commission in Washington finalized its own national rule, one of the agency's most significant regulations during the Trump administration — and one that investor advocates had denounced as too weak.

With Gensler tapped by President Joe Biden to become the new chair of the SEC, that contrast illustrates how, if confirmed, he's likely to lead the market regulator in a sharply different direction from the one charted by his predecessor, Wall Street lawyer Jay Clayton. And that's likely to put market players on edge after four years of industry-friendly oversight.

Sen. Sherrod Brown (D-Ohio), soon to be the Banking Committee chair, said in a statement that Gensler's past experience "demonstrates that he will hold bad actors accountable and put the interests of working families first."

Gensler, a former Goldman Sachs banker, won praise from progressives as a derivatives superviser in the Obama administration for implementing strict new rules on previously unregulated swap contracts. As chair of the Commodity Futures Trading Commission, he also made a name for himself by investigating big banks for rigging Libor, the global benchmark for interest rates.

Gensler's record is part of why groups like Ceres, a sustainable finance nonprofit, expect new and drastically different approaches to securities regulation in Biden's administration, especially related to climate change.

"We're excited because we believe that under new leadership, and particularly under Mr. Gensler's leadership, we have a leader who will be focused on moving on some of the priorities that Ceres has with the SEC for now over a decade," said Veena Ramani, senior program director for capital market systems at Ceres. Those priorities include mandating disclosure about climate change for U.S. public companies as well as reducing U.S. greeenhouse gas emissions.

Numerous progressive and investor advocacy groups are looking for big changes when Gensler takes the helm of the SEC with Democrats in control.

Better Markets President and CEO Dennis Kelleher, who worked on financial policy as part of Biden's transition team, said he believes Gensler "will have a very different view of what a fiduciary duty should be" compared to Clayton. The group hopes that results in changes to the SEC's investment advice rule.

"Fiduciary duty will be one of the key rules that requires immediate attention," Kelleher said.

Still, any significant changes to the investment advice standard will likely trigger pushback from industry. It did in Maryland.

Industry mounted resistance after the bipartisan Maryland Financial Consumer Protection Commission, led by Gensler, unanimously recommended in a January 2019 report that the state pass a law ensuring that all financial professionals giving investment advice adhere to one strict fiduciary standard.

In response, a broad coalition of industry groups began a campaign to kill legislation that would have implemented the commission recommendations. They included the Insured Retirement Institute, which represents broker-dealers, insurers, banks and other retirement industry professionals.

By April of that year, the groups effectively persuaded Maryland lawmakers to back off on creating a separate state financial conduct standard recommended by the commission. Instead, the legislation died in the state senate after being unfavorably reported from the chamber's finance committee.

Just two months later, the SEC finalized its Best Interest regulation that kept two financial advice standards in place for broker-dealers and for investment advisers. The rule required broker-dealers to determine whether an investment is in the best interest of their clients and to disclose related conflicts of interest.

While that was a major step up from the previous standard, which merely called for the products they sell for commissions to be "suitable," it still fell short of what is required of Registered Investment Advisers, who deal with wealthier clients and are obliged to register with the SEC or with state regulators.

Registered Investment Advisers must adhere to the highest fiduciary standard of care spelled out in the 1940 Investment Advisers Act, meaning advice can never be subordinated by other interests other than that of a client.

The SEC's decision to keep two standards in place was the path preferred by industry, which said different standards would preserve choice and lower costs for consumers. It was arguably the opposite what the Maryland commission recommended.

Clayton's SEC ended up defending the advice rule in court after advocates sued to try to force the agency to adopt one unified conduct standard. Financial regulators from seven states and the District of Columbia also supported the advocates' effort, along with members of Congress, who said Clayton's rule misinterpreted the law. But the SEC won the case on appeal before the 2nd U.S. Circuit Court of Appeals, and as a result broker-dealers have been complying with the new standards since June 30, 2020.

Yet even with recent experience fighting against Gensler's policy objectives in Maryland, IRI said it's not making assumptions about how he plans to run the SEC, said Jason Berkowitz, chief legal and regulatory affairs officer for the group.

"I don't want to go in and start assuming anything," Berkowitz said, "Other than that he's coming in with the intention of protecting investors, and I hope that he'll be willing to sit down with IRI and other parties to talk about the best way to accomplish that."

Gensler's track record of pursuing policy disfavored by industry adds new context to remarks he made in a 2011 POLITICO op-ed that laid out his case for sweeping new derivatives regulations under the 2010 Dodd-Frank overhaul.

A decade later, Gensler again has big plans to increase disclosure in a way that could trigger corporate resistance. Gensler clearly took a jab at the financial industry for complaining about the onerous costs of swaps regulation: "economists have agreed for decades that transparency in markets actually reduces costs," he said.

To view online:
https://subscriber.politicopro.com/financial-services/article/2021/01/gensler-clashed-with-sec-investor-advice-rule-in-sign-of-changes-to-come-at-regulator-2029650

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Message

From: Shaw, Betsy [Shaw.Betsy@epa.gov]
Sent: 1/28/2021 8:21:44 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: OAP All-Hands -- Talking points and employee questions

From: Shaw, Betsy
Sent: Thursday, January 28, 2021 10:06 AM
To: Millett, John <Millett.John@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Monroe, Scott <Monroe.Scott@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: RE: OAP All-Hands -- Talking points and employee questions

A suggested response should get this "ELMS" question Suzie thought might come up:

Ex. 5 Deliberative Process (DP)

From: Millett, John <Millett.John@epa.gov>
Sent: Wednesday, January 27, 2021 5:17 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Shaw, Betsy <Shaw.Betsy@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Monroe, Scott <Monroe.Scott@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: OAP All-Hands -- Talking points and employee questions

Same exact e-mail and file as before (sorry) – just adding the agenda up top. Brief cover note and OAP staff questions below.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Millett, John
Sent: Wednesday, January 27, 2021 5:06 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Betsy Shaw (Shaw.Betsy@epa.gov) <Shaw.Betsy@epa.gov>; Scott Monroe <Monroe.Scott@epa.gov>; Isabel DeLuca <DeLuca.Isabel@epa.gov>
Subject: OAP All-Hands -- Talking points and employee questions

Ex. 5 Deliberative Process (DP)

Thanks – Suzie

Message

From: Kabanda, Thierry [Kabanda.Thierry@epa.gov]
Sent: 1/29/2021 8:41:04 PM
To: Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Rakosnik, Delaney [rakosnik.delaney@epa.gov]
Subject: FW: Briefing: Options Selection - Revised CSAPR Update Rule - Monday, February 1 (11 am - 12 pm)
Attachments: Final_Administrator Briefing_Revised CSAPR Update_Options Selection_02.01.21.docx

Good afternoon,

Please see attached material for Monday's 11 AM meeting with the Administrator.

Thierry Kabanda, MBA
Staff Assistant
EPA/Office of Air and Radiation
Office: (202)-564-8604
Cell: (202)-281-6537

From: Murphy, Tina <Murphy.Tina@epa.gov>
Sent: Friday, January 29, 2021 7:57 AM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: Hooper, Daniel <hooper.daniel@epa.gov>; Lifland, David <Lifland.David@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>
Subject: Briefing: Options Selection - Revised CSAPR Update Rule - Monday, February 1 (11 am - 12 pm)

Dear OAR Leadership Team:

Please find attached the materials for the "Options Selection - Revised CSAPR Update Rule" briefing with the Administrator scheduled for Monday, February 1 (11 am - 12 pm). Let us know if you have any questions.

Thank you.

Message

From: Levine, Jake C [JCLevine@cov.com]
Sent: 3/15/2021 7:53:41 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: EPA reconsidering Trump ozone, particulate standards

Hi Joe --

I'm reminded below that I've been meaning to reach out to seek your advice about an administration opportunity that seems to be coming together. It's a bit different from the kinds of opportunities we'd discussed, but I'd nonetheless be quite grateful for your advice if you could spare the time. I know it's probably insanely busy, so I hate to impose, but maybe I could find you for 10 minutes over the weekend?

Appreciate it hope all well!!

Jake

From: POLITICO Pro Energy <alert@email.politicopro.com>
Sent: Monday, March 15, 2021 12:49 PM
To: Levine, Jake C <JCLevine@cov.com>
Subject: EPA reconsidering Trump ozone, particulate standards

[EXTERNAL]

EPA reconsidering Trump ozone, particulate standards

By Alex Guillén

03/15/2021 03:48 PM EDT

EPA is reconsidering the Trump administration's December regulations that left unchanged the national air quality standards for ground-level ozone and particulate matter, a top agency official said on Monday.

Newly arrived Administrator Michael Regan will soon decide whether to continue those reconsiderations or to focus instead on the next round of regulatory reviews.

Background: EPA said in separate rulemakings near the end of the Trump administration that it would retain, without revision, the National Ambient Air Quality Standards for ozone (Reg. 2060-AU40) and particulate matter (Reg. 2060-AS50). Environmentalists had argued both should be tightened, but then-Administrator Andrew Wheeler cited uncertainties about the public health benefits of strengthening those standards to keep them as is.

Details: During a virtual gathering of the Clean Air Act Advisory Committee, member Andrew Hoekzema asked whether EPA is reconsidering the two standards.

"The answer is yes," replied Joe Goffman, EPA's acting air chief. "But I can't elaborate on it in any way that would be particularly satisfying because, as you know, sooner or later, decisions concerning the NAAQS become an administrator-level decision and we certainly haven't had time to engage in a robust way with Administrator Regan."

Goffman said he will soon brief Regan on the options for proceeding with a review of the NAAQS rules, which Regan will have to balance with other demands on EPA's resources. But, Goffman admitted, "both NAAQS decisions are getting a lot of attention right now."

Context: The reconsideration of a NAAQS standard led to one of the biggest environmental regulatory controversies of Barack Obama's presidency and could influence Regan's decision of what to do now.

The Obama EPA similarly reconsidered the George W. Bush administration's 2008 ozone rule, which set the standard at 75 parts per billion. Then-Administrator Lisa Jackson proposed lowering it to the 60 to 70 ppb range. But in 2011, President Barack Obama quashed the rulemaking, citing a need to relieve "regulatory burdens." Environmentalists were enraged by the reversal and alleged it was a political calculation ahead of Obama's 2012 reelection campaign.

With a legal mandate to review the NAAQS standards regulatory, EPA in 2015 did lower the standard to 70 ppb, which many environmentalists argued was still too weak. A reconsideration likely would take a year or two to complete. But the Biden EPA could instead decide to keep the rules and move into a new round of reviews with a goal of completing them by 2025 or 2026, putting the final decision into the next presidential term.

To view online:
https://subscriber.politicopro.com/article/2021/03/epa-reconsidering-trump-ozone-particulate-standards-3987578

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Message

From: Goffman, Joseph [jgoffman@law.harvard.edu]
Sent: 1/20/2021 7:51:22 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Fwd: Day One actions on environment and race

Sent from my iPhone

Begin forwarded message:

From: Jeremy Symons <emailsymons[Ex. 6 Personal Privacy (PP)]
Date: January 20, 2021 at 2:04:47 PM EST
To: c21steeringcommittee@duke.edu
Subject: Day One actions on environment and race
Reply-To: Jeremy Symons <emailsymons@gmail.com>

TACKLING CLIMATE CHANGE, CREATING GOOD UNION JOBS, AND ADVANCING ENVIRONMENTAL JUSTICE

Rejoin the Paris Agreement on Climate Change
The president-elect will sign the instrument to rejoin the Paris Agreement. The instrument will be deposited with the United Nations today, and the United States will officially become a Party again 30 days later. The United States will be back in position to exercise global leadership in advancing the objectives of the Agreement.

Roll Back President Trump's Environmental Actions in Order to Protect Public Health and the Environment and Restore Science
Today, President-elect Biden will sign an Executive Order that takes critical first steps to address the climate crisis, create good union jobs, and advance environmental justice, while reversing the previous administration's harmful policies.

The order jumpstarts swift, initial action to tackle the climate crisis by:

- Directing all executive departments and agencies to immediately review and take appropriate action to address federal regulations and other executive actions taken during the last four years that were harmful to public health, damaging to the

environment, unsupported by the best available science, or otherwise not in the national interest, including agency actions identified on the attached list;

- Directing agencies to consider revising vehicle fuel economy and emissions standards, methane emissions standards, and appliance and building efficiency standards to ensure that such standards cut pollution, save consumers money, and create good union jobs;
- Directing the Department of Interior to protect our nation's treasures by reviewing the boundaries and conditions of the Grand Staircase-Escalante, Bears Ears, Northeast Canyons, and Seamounts Marine National Monuments and placing a temporary moratorium on all oil and natural gas leasing activities in the Arctic National Wildlife Refuge;
- Re-establishing the Interagency Working Group on the Social Cost of Greenhouse Gases (GHG) and directing the issuance of an interim social cost of GHG schedule to ensure that agencies account for the full costs of GHG emissions, including climate risk, environmental justice and intergenerational equity; and
- Revoking, revising, or replacing additional Executive Orders, Presidential Proclamations, Memoranda, and Permits signed over the past 4 years that do not serve the U.S. national interest, including revoking the Presidential permit granted to the Keystone XL pipeline.

ADVANCING RACIAL EQUITY & SUPPORTING UNDERSERVED COMMUNITIES

The president-elect's equity agenda is grounded in advancing racial justice and building back better for communities who have been underserved, including people of color and Americans with disabilities, LGBTQ+ Americans, religious minorities, and rural and urban communities facing persistent poverty.

Everyone across America benefits when we take deliberate steps to become a more just society. Analysis suggests that closing racial gaps in wages, housing credit, lending opportunities, and access to higher education would amount to an additional $5 trillion in gross domestic product in the American economy over the next 5 years, and create

millions of new jobs. We are a nation founded on principles of equality and it is in the interest of everyone across the country that the government be intentional in ensuring that its policies reach all of us in an equitable way. By advancing such equity, the federal government can build pathways so that everyone across America has the opportunity to reach their potential.

President-elect Biden will sign executive actions today to:

Launch a Whole-of-Government Initiative to Advance Racial Equity
The president-elect will sign an Executive Order beginning the work of embedding equity across federal policymaking and rooting out systemic racism and other barriers to opportunity from federal programs and institutions. The Executive Order will define equity as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities, such as Black, Latino, Indigenous and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; LGBTQ+ persons; people with disabilities; religious minorities, persons who live in rural areas; and persons otherwise affected by persistent poverty or inequality. The president-elect will:

- Establish that advancing equity for all — including people of color and others who have been historically underserved and marginalized — is the responsibility of the whole of our government;
- Direct every federal agency to undertake a baseline review of the state of equity within their agency and deliver an action plan within 200 days to address unequal barriers to opportunity in agency policies and programs;
- Launch a new equitable data working group to ensure that federal data reflects the diversity of America;
- Task the Office of Management and Budget (OMB) with working to more equitably allocate federal resources to empower and invest in communities of color and other underserved communities;

- Improve the delivery of government benefits and services to ensure that families of all backgrounds across the country can access opportunity, for example by reducing language access barriers;
- Study new methods that federal agencies can use to assess whether proposed policies advance equity;
- Direct agencies to engage with communities who have been historically underrepresented, underserved, and harmed by federal policies.

President-elect Biden has asked Ambassador Susan Rice, as Domestic Policy Advisor, to lead a robust interagency process to hold the federal government accountable for advancing equity for families across America.

In this Executive Order, the president-elect will also rescind the Trump Administration's 1776 Commission, which has sought to erase America's history of racial injustice. And, he will revoke President Trump's damaging executive order limiting the ability of federal government agencies, contractors and even some grantees from implementing important and needed diversity and inclusion training. Additional actions in the coming weeks will restore and reinvigorate the federal government's commitment to diversity, equity, inclusion, and accessibility.

--
Jeremy Symons
(202) 306-7902

Message

From: Murphy, Tina [Murphy.Tina@epa.gov]
Sent: 1/25/2021 8:27:41 PM
To: OAR Briefings [OAR_Briefings@epa.gov]
CC: Newberg, Cindy [Newberg.Cindy@epa.gov]; Kocchi, Suzanne [Kocchi.Suzanne@epa.gov]; Clarke, Deirdre [clarke.deirdre@epa.gov]; Garner, Dorothy [Garner.Dorothy@epa.gov]
Subject: AIM Act Overview briefing 1/26 @3pm
Attachments: AIM Act briefing -overview for jgoffman -01-26-2021 final.pptx; image003.png

Dear OAR Leadership Team,

Please find attached "AIM Act Overview briefing." Scheduled with Joe Goffman for Tuesday, January 26th ('tomorrow): 3-3:45 p.m.

Thank you.

Message

From: Eric Haxthausen [Ex. 6 Personal Privacy (PP) .com]
Sent: 1/25/2021 4:09:33 AM
To: goffman.joseph@epamail.epa.gov
Subject: Congratulations/OAR

Joe,

Congratulations on the PDAA appointment in OAR! I'm glad to see that you landed there – you are the perfect candidate for that role (and for the AA role, if it works out that way).

As you are building your team, please let me know if there is a role I could usefully play. Earlier in my career, I was the OIRA desk officer responsible for much of OAR, so I know the office and many of the relevant Clean Air Act provisions well. I've worked closely with many of the senior staff – Peter Tsirigotis, Chris Grundler, Karl Simon, among others – and Sarah Dunham is a friend, dating back to graduate school. I'm also very familiar with the CAFE program, as well as with legislative advocacy on climate issues, from my EDF and TNC days. So, there might be a number of ways that I could be helpful to you and the Agency, depending on your needs.

I'd be happy to discuss further at your convenience. Let me know if you would have time for a brief phone conversation sometime in the next couple weeks.

Best,
Eric

Message

From: Utech, Dan [Utech.Dan@epa.gov]
Sent: 1/23/2021 12:11:56 AM
To: Cassady, Alison [Cassady.Alison@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]; Arroyo, Victoria [Arroyo.Victoria@epa.gov]
Subject: RE: DRAFT Memo on EO Implementation

Thanks very much Alison, this looks really good. I'll tune it up in and transmit in the morning. Best, Dan

---

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Friday, January 22, 2021 5:44 PM
To: Utech, Dan <Utech.Dan@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>; Arroyo, Victoria <Arroyo.Victoria@epa.gov>
Subject: DRAFT Memo on EO Implementation

Dan,

Here's a draft of a memo on EO implementation. It includes the edits Vicki mentioned on our call just now. I also added in the two new EOs that popped out today:
Executive Order on Protecting the Federal Workforce (revokes Schedule F, among other items)
Executive Order on Economic Relief Related to the COVID-19 Pandemic

TO: Current and Acting EPA Leadership
FR: Dan Utech, Chief of Staff
RE: Implementation of President Biden's Executive Orders

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

EXECUTIVE ORDERS FOR REVIEW

Please review the following and develop a plan for meeting the given deadlines and completing the tasks in your purview.

MEMO: Regulatory Freeze Pending Review
MEMO: Modernizing Regulatory Review
Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation
Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
Executive Order on Organizing and Mobilizing the United States Government to Provide a Unified and Effective Response to Combat COVID-19 and to Provide United States Leadership on Global Health and Security
Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing
Executive Order on Ensuring an Equitable Pandemic Response and Recovery
Executive Order on Ensuring a Data-Driven Response to COVID-19 and Future High-Consequence Public Health Threats
Executive Order on Ethics Commitments by Executive Branch Personnel
Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
Executive Order on Establishing the COVID-19 Pandemic Testing Board and Ensuring a Sustainable Public Health Workforce for COVID-19 and Other Biological Threats
Executive Order on Protecting the Federal Workforce (revokes Schedule F, among other items)
Executive Order on Economic Relief Related to the COVID-19 Pandemic

Message

From: Miranda Ballentine [MBallentine@rebuyers.org]
Sent: 1/29/2021 8:37:03 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: Hello! (and sharing a new business statement on Federal Clean Energy Policy)
Attachments: REBA Federal Policy Statement (Final).pdf

Hi Joe, sending to correct email now! ☺

Miranda Ballentine
CEO, Renewable Energy Buyers Alliance

From: Miranda Ballentine
Sent: Friday, January 29, 2021 3:01 PM
To: utech.dan@epa.gov; goffman.joe@epa.gov; cassady.alison@epa.gov
Cc: Laura Vendetta <lvendetta@rebuyers.org>
Subject: Hello! (and sharing a new business statement on Federal Clean Energy Policy)

Dear Dan, Joe, and Alison,

Congratulations on your new roles. It's such a delight to see your names in these important jobs. So many things we could connect about… I know your hands are so full in these first days on the job (exciting to see how much is cranking already!).

I wanted to make sure you saw that earlier this week, three dozen iconic U.S. businesses – from Johnson and Johnson, General Motors and Walmart, to Walt Disney, Amazon, and McDonald's – signed a statement, organized by the Renewable Energy Buyers Alliance, calling on the federal government to implement strong and specific national policies to modernize the power grid, accelerate the transition to a zero-carbon power sector and ensure it is resilient, affordable, customer-focused, and carbon-free.

I previously shared this statement with Joe (and several of the DOE ART team) in December, and I want to reshare it now with the backing of individual businesses and REBA. Together, we are eager to work with you and the full Biden Administration on these important priorities to address both our environmental and economic crises. Please find the press release for the statement here.

Politico, Green Tech Media, and S&P Global provided some of the coverage of the business statement. Utility Dive also ran an op-ed this week echoing one of the statement's main policy priorities—the benefits of organized wholesale markets.

I would welcome the opportunity to discuss this in more detail, and we look forward to working with you and the Administration over the next four years.

Sincerely,
Miranda

Miranda Ballentine
CEO, Renewable Energy Buyers Alliance
mballentine@rebuyers.org
1425 K Street | Suite 1110 | Washington, DC | 20005
+1.833.303.REBA (7322) x 101

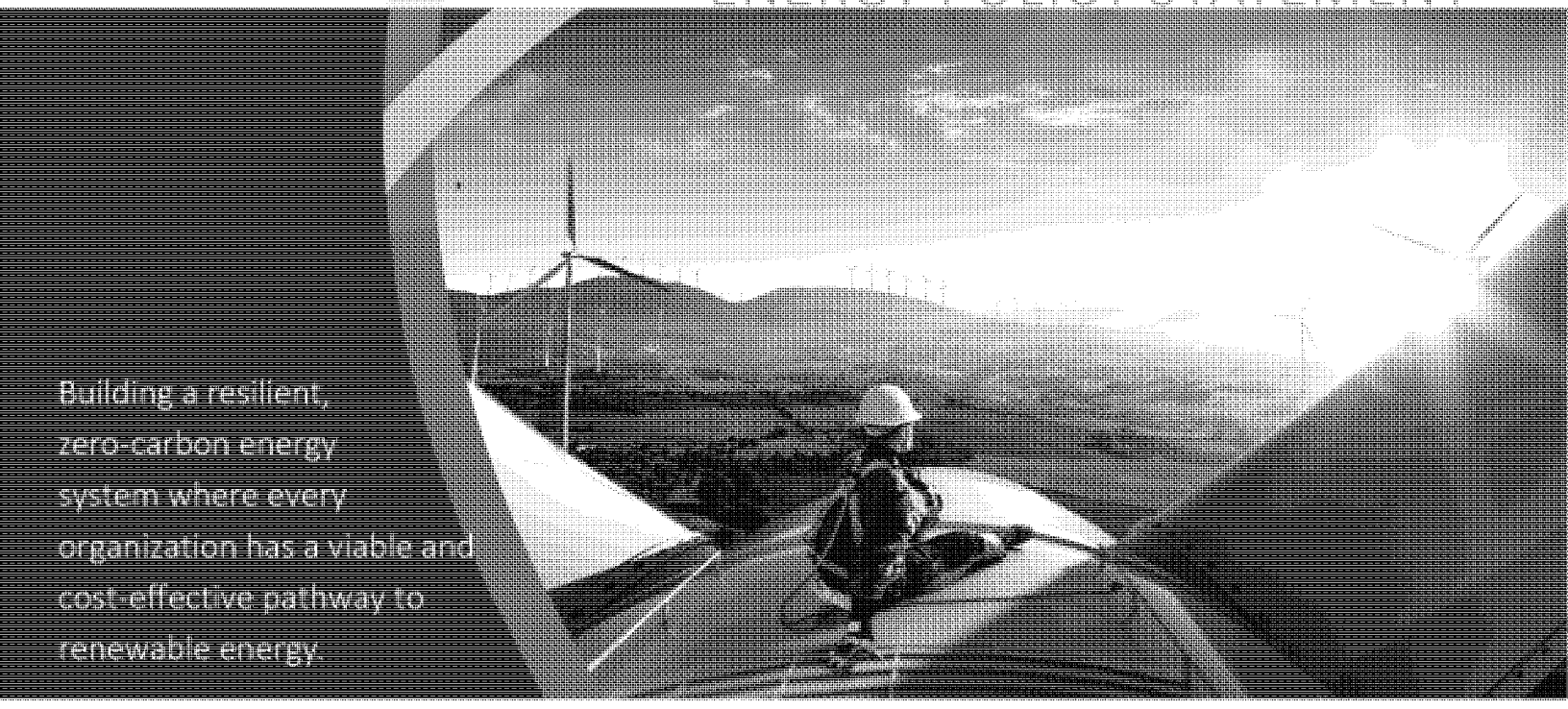
rebuyers.org

The **Energy Buyer Federal Clean Energy Policy statement**, organized by the REBA, emphasizes the need for ambitious national policies that modernize the power grid and ensure it is resilient, affordable, customer-focused, and most importantly, carbon-free. Download the full statement here.

REBA
Renewable Energy Buyers Alliance

JANUARY 2021

ENERGY BUYER FEDERAL CLEAN ENERGY POLICY STATEMENT



THIS STATEMENT WAS DEVELOPED BY THE RENEWABLE ENERGY BUYERS ALLIANCE AND IS SUPPORTED BY THE COMPANIES LISTED.

Policies to modernize the power grid must ensure it is resilient, affordable, customer-focused, and carbon-free. The below signed companies support the incoming Administration undertaking the necessary actions to achieve a 100% clean energy power sector, including the adoption of ambitious national policies.

More than 250 global businesses have committed to using 100% renewable energy, and Fortune 1000 companies may represent as much as 85 GW of renewable energy demand through 2030. American businesses have signed nearly 30 GW of new, large-scale renewable energy contracts since 2014. In 2019, announced deals, totaling 9.4 GW, were the equivalent of 80% of total renewable energy capacity installed in the US that year. The economic potential is substantial: a recent analysis by the American Clean Power Association estimates that 50% renewable energy and storage by 2030 could create 1 million new jobs.

These large energy customers want a decarbonized power system that greens the grid for all by dramatically increasing zero-carbon energy delivered to all customers reliably, equitably, and at least-cost.

At the same time, energy buyers with ambitious clean energy goals of their own, want and need to have the ability to choose accelerated, cost-effective, zero-carbon, and renewable energy across the US to meet their own goals.

As policymakers prioritize solutions to address today's economic, social, and climate challenges, large energy customers encourage bipartisan support for federal actions that expand access to clean energy for all energy buyers.

FEDERAL POLICY PRIORITIES FOR A CUSTOMER-CENTRIC CLEAN ENERGY TRANSITION

Actions taken by both the Biden Administration, and any economic recovery and infrastructure legislation, should focus on leveraging the clean energy sector to create jobs and to support American competitiveness and leadership. Energy buyer support for policies that accelerate energy procurement goals while also greening the grid for all can be advanced through three key federal policy strategies.

The Renewable Energy Buyers Alliance, an association of 120+ commercial and industrial energy buyers representing $5.5 trillion in revenues and nearly 13 million employees, envisions a resilient zero-carbon energy system where every organization has a viable pathway to renewable energy.

01 LEVERAGE ORGANIZED WHOLESALE ELECTRICITY MARKETS FOR GRID DECARBONIZATION

Improve existing wholesale markets and expand wholesale markets to achieve least-cost, efficient clean energy deployment.

Energy buyers support the development of well-designed organized wholesale markets in line with the Renewable Energy Buyers Alliance's **Buyers Wholesale Market Design Principles** in all regions of the country, operated by Regional Transmission Organizations. Organized regional wholesale markets produce billions of dollars in customer savings annually and are critical to maintaining reliability, system efficiency, and integrating clean energy onto the electric grid. We support federal actions to use existing statutory authority and advance new legislative action, including:

a. **Empower FERC** to improve market design for the benefit of all customers and to facilitate the expansion of wholesale markets. Wholesale market design should cost-effectively integrate clean energy, safeguard market integrity through transparency, and scale to the future through durable rules that spur investment and support access for energy buyers.
b. **Fund states and utilities** pursuing participation in organized wholesale markets.
c. **Invest in transmission infrastructure and advanced electric system operations** that provide expanded regional benefits.
d. **Ensure climate and energy policies leverage and incentivize wholesale market design** to accelerate decarbonization at least-cost.

02 DECARBONIZE THE GRID FOR ALL

To green the grid for all customers faster, affordably, and equitably, we urge the federal government to take swift action to harmonize and update the current patchwork of clean energy policies.

Energy buyers support ambitious national policies to organize and motivate the clean energy transition, including:

a. **Collect and publicize harmonized data on emissions factors and resource mixes** for delivered electricity from every load-serving entity in the US. Customers need to be able to understand, account for, and claim the carbon impact of the power they consume to be able to decarbonize it.
b. **Develop a national strategy for transmission planning** that incentivizes, expands, and upgrades interregional transmission lines, increases transmission development at the "seams" between regions, and integrates renewable energy reliably and cost-effectively.
c. **Support and streamline policies that ensure a robust and efficient renewable energy supply market,** such as renewable energy incentives, licensing, and permitting.
d. **Accelerate and enhance next-generation procurement,** including the federal government's energy procurement, shifting the focus to incentivize consumption of zero-carbon energy everywhere, all the time.

03 SUPPORT INNOVATION TO ADVANCE A RESILIENT, AFFORDABLE, CLEAN ENERGY SYSTEM

Energy buyers support increasing federal funding for clean energy technology research, development, and demonstration.

Federal energy research, development, and demonstration (RD&D) is significantly underfunded, resulting in an unsurmountable barrier for promising, pre-commercial clean energy technologies on the path to market. Energy customers have an important role to play, in partnership with the federal government, by providing crucial product feedback and testing technologies in real-world environments.

We support increasing energy RD&D funding for energy innovation programs, including:

a. **Support demonstration and commercialization activities** specifically focused on later-stage demonstration and early deployment of clean energy innovations by the private sector. Public-private partnerships to scale pre-commercial clean energy technology solutions can drive economic recovery.
b. **Align investments around economy-wide decarbonization potential** to ensure a robust set of technology solutions to help drive decarbonization across all sectors, including the industrial sector where development of technology that reduces emissions can also rebuild American manufacturing.

1. Adobe
2. Amazon
3. American Honda Motor Co., Inc.
4. Ardagh Group
5. Atlassian
6. Cargill
7. Danone North America
8. DSM North America
9. Equinix, Inc.
10. Facebook
11. General Motors
12. Google
13. H&M
14. Johnson & Johnson
15. LafargeHolcim
16. McDonald's Corporation
17. Micron Technology, Inc.
18. Microsoft Corporation
19. Nestle
20. Novozymes
21. PepsiCo
22. QTS Data Centers
23. Ralph Lauren Corporation
24. Renewable Energy Buyers Alliance
25. Sabey Data Centers
26. Saint-Gobain North America
27. Salesforce
28. Target
29. The Clorox Company
30. The Walt Disney Company
31. Unilever United States
32. VMware
33. Walmart Inc.
34. WeWork
35. Workday
36. Yum! Brands, Inc.

REBA
Renewable Energy Buyers Alliance

Message

From: Campbell, Ann [Campbell.Ann@epa.gov]
Sent: 1/27/2021 11:05:19 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Subject: FOR YOUR REVIEW: Hearing Prep Qs
Attachments: Hearing Prep_Questions.docx

Joe, Tomás – as discussed during the morning calls with the ODs, please find attached the hearing prep Qs the offices sent in for your consideration.

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

Message

From: Hoekzema, Andrew [ahoekzema@capcog.org]
Sent: 3/15/2021 7:38:17 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Shoaff, John [Shoaff.John@epa.gov]; Whitehurst, Shanika [whitehurst.shanika@epa.gov]
Subject: Follow-up on CAAAC

Hi Joseph,

Thanks again for taking the time to engage with us. Just for context, I've been on the CAAAC since 2015 and am serving on the 50th CAA Anniversary report, so my final term on the CAAAC will be complete in August.

As a follow-up to our meeting, I think that the ways to "operationalize" the idea of EPA best leveraging the committee's expertise would include the following:

1) EPA should pose specific charge questions for CAAAC meetings on implementation issues in the same way it issues charge questions to the Clean Air Scientific Advisory Committee (CASAC) on scientific questions regarding NAAQS reviews.
2) EPA staff should align these charge questions with its regulatory agenda to help provide input early in EPA's process in making a decision in order to gain maximum insight into stakeholder perspectives and the universe of options it may wish to consider. For example, asking questions at a pre-proposal stage would ensure that it can make more meaningful use of public comments at the proposal stage. It can also help provide key support that EPA staff could point to at the proposal stage or save it lots of extra work developing options that they could have determined at an earlier stage might be problematic if they had been vetted with the CAAAC.
3) If EPA scheduled these meetings further out (i.e., maybe 6 months out or more), it would enable members to better be able to make sure they could participate and would enable the formation of workgroups to work through charge questions that may be taken up at that meeting.
4) To some extent EPA has done this at times at CAAAC meetings, but it should also consider having a standing item for each meeting in which it details responses to/follow-up on the committee's recommendations
5) To the extent that EPA staff wish to present information to us, rather than seek specific recommendations, they should consider scheduling separate info sessions/webinars with presentations from EPA staff rather than taking up so much meeting time with EPA staff presentations to us. I would estimate that 90-95% of the time I have spent on CAAAC over the past 6 years – with the exception of the workgroup I'm currently on – has just been listening to EPA staff presentations.
6) Due to the nature of the committee, it is likely going to be hard to get consensus on major issues (like the NAAQS consideration, for example), but if you at least go through the process of asking the CAAAC and gathering responses as to which stakeholders said what, you can then include that information in your briefing documents/etc. for senior leadership.
7) EPA staff could also ask us to submit written comments on questions between meetings if an issue is time-sensitive enough that it couldn't wait for a meeting.

As a member of the workgroup for the 50th anniversary report, I can tell you that it has been the most engaging and stimulating experience I've had to date being on CAAAC, and I really think that more extensive use of work groups should be a high priority for this committee moving forward since it enables more engagement and I think helps provide more useful insight to EPA.

On the specific topic I raised, –the NAAQS reconsideration issue – although I think the administrative record clearly made a pretty clear case that a stronger annual PM2.5 NAAQS was needed, I think that if you look at how the 2008 O_3 NAAQS consideration played itself out, it's really not EPA's best option to address this issue and would likely delay the implementation of new measures that would be needed to reduce annual PM2.5 concentrations compared to other courses of action. The staff time it required for EPA to go through the process of the reconsideration for the 2008 O_3 NAAQS wound up postponing the completion of the subsequent NAAQS review by several years, and caused a postponement of the implementation of new control measures in areas with high O3 levels relative to what would have

occurred if they had just completed the next O3 NAAQS review on-time. Instead, at least with the annual PM2.5 NAAQS, I would encourage EPA to consider the following:

1) Initiate the next PM NAAQS review right away and ensure that it gets completed no later than December 2025 (earlier if possible) to ensure that this administration has an opportunity to weigh in on this issue in the same way that the previous administration did; the same staff members and CASAC members who would be asked to weigh in on a reconsideration will be needed for the next NAAQS review anyway.
2) Initiate a new round of nonattainment designations for areas that are violating the current NAAQS but have not yet been designated nonattainment – EPA has never before retained the PM NAAQS without some kind of revision, and only a revision forces EPA to initiate a round of area designations, but it hasn't really established how to handle this situation in which it retains a NAAQS and there are areas designated "attainment/unclassifiable" at the time are violating the NAAQS.
3) Consider issuing a "SIP Call" under Section 110 of the Clean Air Act to ask all states to submit new "infrastructure" and "transport" SIPs for the PM NAAQS and consider requiring additional emission reductions from states in the context of these requirements. EPA's current guidance for interstate transport requirements for the 2012 PM2.5 NAAQS is very vague and it could achieve significant nation-wide reductions in PM2.5 without changing the NAAQS at all if it revisited this issue.
4) Update its monitoring requirements to shift emphasis away from NAAQS where all areas of the country are in attainment (CO and NO2) towards PM2.5 in order to both: a) identify areas that may be violating the current NAAQS and b) gather more data for the next NAAQS review.

These kind of recommendations have limited value coming from just one CAAAC member writing in an individual capacity, but could lend significant support if the EPA could point to them as CAAAC recommendations, and if the majority of CAAAC members voted to support an alternative route, you'd have that too. Either way, you'd have better information with which to make a decision.

Andrew Hoekzema
Director of Regional Planning and Services
Capital Area Council of Governments
Ph: 512-916-6043 ~ Fax: 512-916-6001
ahoekzema@capcog.org ~ www.capcog.org
No electronic communication by a CAPCOG employee may legally obligate the agency

Message

From: beth.viola@hklaw.com [beth.viola@hklaw.com]
Sent: 3/12/2021 4:22:18 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]
CC: Michael.mcadams@advancedbiofuels.onmicrosoft.com; policynexusadvisors@gmail.com
Subject: ABFA Letter on Biointermediates
Attachments: ABFA March 2021 EPA Biointermediates Letter - Final.pdf

Happy Friday Gentlemen:
Attached please find a letter from ABFA President Mike McAdams on biointermediates. We hope to have an opportunity to discuss with you soon.
Many thanks,
Beth

Beth A. Viola | Holland & Knight
Senior Policy Advisor
800 17th Street N.W., Suite 1100 | Washington DC 20006
Phone 202.457.7030 | Mobile 202.270.5970
beth.viola@hklaw.com | www.hklaw.com

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Advanced Biofuels Association

Mr. Daniel Utech
Chief of Staff
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Mr. Joseph Goffman
Acting Assistant Administrator, Office of Air and Radiation
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

March 12, 2021

Dear Mr. Utech and Mr. Goffman,

Congratulations to you both for your new positions at the Environmental Protection Agency (EPA). I do not know two better people to serve our country through EPA.

I reach out today in my capacity as president of the Advanced Biofuels Association (ABFA). I hope to take this opportunity to reintroduce ABFA to you and provide some insight into our unique set of members and combined efforts to work toward our shared goal of economy-wide net-zero greenhouse gas (GHG) emissions. To this end, ABFA's members produce, blend, and distribute significant volumes of low-carbon liquid transportation fuels across the United States.

ABFA's forty members include renewable fuel producers, major refiners, fuel blenders, and distributors – effectively the entire supply chain for these advanced biofuels. Our companies collectively produce more than four billion gallons of advanced and cellulosic renewable liquid transportation fuels annually, including renewable diesel, biodiesel, renewable jet fuels, and renewable gasoline. Furthermore, our members sell more than 30% of the heating oil and diesel sold in the United States each year.

For the past eight years, ABFA has supported and worked with EPA to address the principal policy barrier hampering our members' ability to deliver increased volumes of advanced and cellulosic biofuels under the Renewable Fuel Standard (RFS) program. This barrier is related to biointermediate feedstocks and must be addressed expeditiously.

Simply put, a biointermediate is an EPA-approved feedstock that is only partially converted at one facility into an intermediary feedstock and must then be transferred to another facility to be converted into an approved, finished renewable fuel. While the pathway would ordinarily generate a Renewable Identification Number (RIN) credit under the RFS program, the fact that the processing facilities are not co-located prevents the final fuel from generating a RIN credit under the current EPA regulations. These fuels are thus rendered wholly ineligible for participation in the program, as obligated parties cannot use these fuels to comply with the RFS, despite the significant GHG emissions reductions the fuels deliver.

In 2016, after several years of work on this and other issues with the RFS program regulations, EPA issued a proposed rule that included a section to address this barrier: the Regulatory Enhancement Growth Support (REGS) Rule (EPA Docket Number EPA-HQ-OAR-2016-0041). I have enclosed the executive summary of this issue in the proposed rule as an attachment (Appendix C) to this letter.

Many of our member companies provided input to EPA regarding the design of this section. We appreciated the thoughtful attention the Agency afforded to this issue, and were supportive of the language drafted by the Agency in the proposed REGS Rule. ABFA submitted comments to EPA to this effect when the Agency solicited public comment on its proposal. As you may note upon reviewing the public comments received the Agency pertaining to this section, the responses were overwhelmingly in

favor of finalizing this regulation on biointermediates. All sectors, including the airlines, are supportive of finalizing this action, as it is critical to unlocking more production of the renewable jet fuels necessary to lower the carbon intensity of air travel.

Regretfully, the previous Administration did not prioritize completion of even the portion of the the REGS Rule proposal on biointermediates, despite wide industry support for the language and despite recommendation from Congress in the report language accompanying EPA's appropriations for both FY 2020 and FY 2021 to do so. I have enclosed this language (Appendix A) with this letter for your reference.

In 2021, two of ABFA's members will, for the first time, work in partnership to operate a cellulosic biofuels plant that sends biointermediate feedstock to a refinery to co-process into renewable diesel and renewable gasoline components. These fuels, by law, will deliver a minimum 60% reduction over the fuels they are replacing. Unless EPA changes the regulations on co-processing of biointermediate feedstocks, these companies will not receive a RIN credit under the RFS program. This situation runs counter to the intent of the RFS program, as there will be no incentive for obligated parties to purchase these cellulosic fuels and use them to replace fossil-based fuels.

From a climate perspective, this single action provides significant opportunity for both near- and long-term emissions reductions. Ultimately, to increase production of advanced renewable fuels like renewable jet, renewable diesel, and renewable gasoline, the biointermediate issue must be addressed.

I am attaching as a third enclosure (Appendix B) to this letter a communication from many of ABFA's members to EPA Assistant Administrator for Air Bill Wehrum in 2019, in which they proposed several possible pathways for finalizing the language contained in the REGS Rule. These options include separating the biointermediates section of the REGS rule, opening an abbreviated comment period, and then finalizing the rule. In addition, the Agency could implement an interim policy for the facilities that are ready to commercialize and produce these advanced cellulosic fuels using the biointermediates pathway until such time as the final rule can be issued. ABFA's understanding is that career staff at the EPA are ready to move forward with the biointermediates section upon direction from Agency leadership on this matter. We strongly encourage the Agency to move forward expeditiously, as this change would enable our members to deliver significantly more gallons of advanced and cellulosic fuels under the RFS program.

ABFA welcomes any questions you may have regarding this proposal. Our consultant Paul Argyropoulos is particularly knowledgeable about this subject, and would be happy to provide any additional information you may require in your review of this rule.

Congratulations again on your new positions within the Agency. I look forward to working with you both to help realize our shared vision of lowering the carbon intensity of the U.S.'s transportation fuel.

Sincerely,

Michael McAdams
President, Advanced Biofuels Association

Appendix A. Appropriations Report Language

Joint Explanatory Statement Accompanying P.L 116-93, the FY 2020 Consolidated Appropriations Act
Division D (Interior-Environment)

Biointermediates.—The Committee is aware that the Agency included provisions on the production, transfer, and use of biointermediates in its proposed rulemaking "Renewables Enhancement and Growth Support" [REGS rule]. The Committee notes that some stakeholders believe a multi-facility approach to biointermediates, allowing biofuel feedstocks to be produced, partially processed, or both at one or more locations and refined at another location, enhances feedstock and product flexibility, addressing the need for continued growth in the production of second generation biofuels. Further, the Committee notes that the Agency receives renewable fuel pathway petitions that, despite meeting all of the other requirements under the regulations, are deemed ineligible due to the use of biointermediates as feedstock. The Committee recommends the Agency finalize a rule permitting the production, transfer, and use of biointermediates in renewable fuel production, as soon as practicable, consistent with the biointermediates provisions included in the REGS rule, the record of the public hearing held on December 16, 2016, and public comments received in the docket associated with the proposed rule. Further, the Committee recommends that the Administrator, consistent with the pathway provisions in the REGS rule addressing coprocessing, review the renewable fuel pathways so as to ensure the inclusion of biointermediates, including those coprocessed with petroleum to produce cellulosic gasoline, diesel, jet fuel, and heating oil, and revise the definition of cellulosic diesel to permit renewable fuel that is coprocessed with petroleum to qualify. The Committee encourages the Agency to allow the use of either of the two methods for determining the renewable content of co-processed fuels currently found at 40 CFR 80.1426(f)(4). The Committee directs the Agency to provide a report on these efforts, including the number of renewable fuel pathway petitions approved during the fiscal year that use biointermediates and coprocessing.

Joint Explanatory Statement Accompanying P.L 116-260, the FY 2021 Omnibus and COVID Relief and Response Act
Division G (Interior-Environment)

Biointermediates.-The Agency is directed to continue to follow the guidance contained in Senate Report 116-123 regarding biointermediates. The Committees appreciate the work of the Agency to address the coprocessing of biointermediates. Consistent with the guidance in Senate Report 116-123, the Committees expect the Agency to finalize a rule permitting the production, transfer, and use of biointermediates within 90 days of the date of enactment of this Act. The Committees direct the Agency to brief the Committees within 60 days of enactment of this Act about its plans for action.

Appendix B. Letter to EPA Regarding Biointermediates

June 12, 2019

The Honorable William Wehrum
Assistant Administrator Office of Air and Radiation
Environmental Protection Agency
Mail code: 6101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wehrum:

We write on behalf of the Advanced Biofuels Association (ABFA), the Coalition to Address Removal of Regulatory Impediments (CARRI), and others with interest in deploying sustainable fuels. ABFA would first like to thank you for your remarks to the ABFA Board and its many members on Thursday, May 9, 2019. We appreciate your candor with regard to all that is currently before you and your team as it pertains to the Renewable Fuel Standard (RFS) Program and the many related fuel program issues.

CARRI is a broad-based group of companies focused on providing high-performing, sustainable, environmentally beneficial, high-quality fuels and bio-based products to market. We represent all forms of feedstock suppliers, technology providers, renewable product and fuel producers, fuel refiners, and marketers. CARRI's goal is to provide expeditious solutions to commercialization of these products by focusing on resolving and removing unnecessary interpretive and regulatory impediments adversely affecting commercialization of advanced and cellulosic biofuels and bio-based products.

The signatories to this letter are particularly keen for EPA to a) allow the production, transfer and use of biointermediates in renewable fuel production to generate Renewable Identification Numbers (RINs); b) allow co-processing pathways to generate cellulosic D3 and D7 RINs; and c) approve mass balance and other alternative standardized industry-compatible test methods under the existing regulations to accurately account for the quantity of RINs generated by renewable fuel produced through co-processing. As you are aware, the Regulatory Enhancement Growth Support (REGS) rule includes proposed language that would resolve the current impediments associated with biointermediates and co-processing, and furthermore should be amended to clarify that mass balance and other appropriate test methods may be used at the discretion of obligated parties to determine RIN generation from co-processing. This language has already gone through the Administrative Procedure Act (APA) notice and comment requirements and awaits finalization by EPA.

We fully appreciate the significant challenges and resource demands the RFS program places on your Office and your staff, and we stand fully committed to support you and your team going forward. At the recent ABFA Board meeting, it was suggested that the Agency should consider taking a similar approach to biointermediates as it did with reopening comments on just one section of the REGS rule in April. Utilizing this approach for the section on biointermediates would accomplish several things. First, it would send a signal to the market—both companies and investors—that the Agency intends to move forward with addressing this current impediment to the transition to advanced cellulosic fuels. Second, it would establish a timeline by which the market could finally initiate certainty into production and planning.

Given the fact that EPA already proposed rulemaking concerning biointermediates in 2016, we believe that EPA could finalize the biointermediates rule without further notice and comment. We also believe that the Agency has existing authority to allow companies to register pathways that include

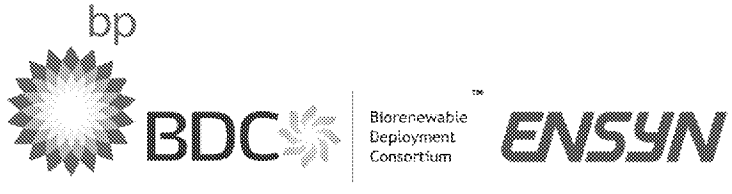
biointermediates for RIN generation, and it is not strictly necessary to issue a new rule. Finalizing the biointermediates rule, however, would provide certainty to the market. If the agency chooses not to immediately finalize the rule, the option we presented at our meeting was for the agency to reopen a brief comment period on sections dealing with biointermediates and complete the rule as expeditiously as possible.

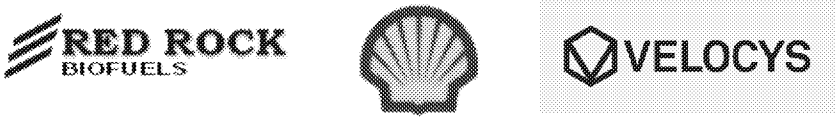
The Agency could announce and publish plans to finalize the proposed approach, ask for any additional comments for the record via an abbreviated comment period, and then initiate final action over a pre-determined timeframe that can be managed around meeting its other obligations. As part of this approach, the Agency can also move to immediately implement an interim approach for the facilities that are ready to commercialize and produce these advanced cellulosic fuels using the biointermediates pathway. Given that there are only a handful of companies currently prepared to immediately take advantage of the biointermediates pathway, this would not stress Agency resources. Guidance can be issued to those companies that includes assurances the Agency is comfortable with through the registration process.

As you know, industry broadly approves of the biointermediates proposal, as evidenced by the diversity of the members in CARRI, ABFA, and the other signatory organizations on this letter. Many other stakeholders are also supportive of taking action on this issue. It is one of the significant impediments EPA must address to enable the market to transition to advanced and cellulosic fuels, but it is one that the Agency can take action on immediately and one that will lead to the production of advanced and cellulosic fuels in the near and long term.

We appreciate your willingness to consider this approach and stand willing and able to provide whatever support is necessary to move forward.

Sincerely,





Appendix C. REGS Rule Biointermediates Issues Summary

the regulatory provisions may be warranted. Some of the proposed regulatory changes would support the increased use of higher-level ethanol blends such as E85, while others would promote increased production of cellulosic and other advanced biofuels.

We are also proposing a number of other changes to the RFS regulations and other fuel regulations to streamline them, provide clarifications, and make technical corrections.

B. Summary of the Major Provisions of the Regulatory Action

1. Biointermediates

Since the RFS2 program was finalized in 2010, we have been made increasingly aware of renewable fuel producers that would like to process fuel at more than one facility. In some cases, it may be preferable for economic or practical reasons for renewable biomass to be subjected to substantial pre-processing at one facility before being sent to a different facility where it is converted into renewable fuel. For example, renewable biomass may be converted into a proto-renewable fuel (such as a bio-oil) at one facility that requires some additional processing at a different facility before it can be used as transportation fuel. These production methodologies have the potential to lower the cost of using cellulosic and other feedstocks for the production of renewable fuels by reducing the storage and transportation costs associated with feedstock handling—especially for cellulosic biomass. Thus, we believe that such technologies hold considerable promise for the future growth in production of the cellulosic biofuels required under the RFS program. However, we did not envision significant fuel production operations occurring over multiple facilities in drafting the existing regulations, and regulatory changes are necessary to both generally allow such practices, and to provide the necessary registration, reporting, and recordkeeping requirements that will facilitate appropriate oversight by the EPA.

We believe that increasing use of these "biointermediates" will likely provide an important component of the growth in renewable fuel production in the future, particularly for advanced and cellulosic biofuels. We are proposing changes in the RFS regulations to clearly specify requirements that apply when renewable fuel is produced through sequential operations at more than one facility. These changes center around the production, transfer, and use of biointermediates and the creation of new regulatory requirements related to registration, recordkeeping, and reporting for facilities producing or using a biointermediate for renewable fuel production. The new requirements on the biointermediate producer would be similar to those already required for renewable fuel producers.

2. Ethanol Flex Fuel

In the Tier 3 Motor Vehicle Emission and Fuel Standards ("Tier 3") final rule, the EPA finalized new standards for passenger vehicles, including flexible fuel vehicles (FFVs), and more stringent gasoline sulfur standards to enable those standards to be achieved.[10] In addition, the EPA finalized requirements for test fuels used in certifying FFVs. At the same time, the EPA deferred finalizing in-use fuel quality standards for higher-level ethanol blends used in FFVs.[11] As discussed in the Tier 3 proposal, the current regulations and requirements for E51–83 [12] (historically referred to as E85 [13]) are inadequate, unclear, and out of date given recent changes to market practices.[14] While there are no standards specified in our current regulations for E51–83, the historically approved practice of blending E51–83 from just denatured fuel ethanol (DFE) and certified gasoline and gasoline blendstocks for oxygenate blending (BOBs) virtually ensured the resulting blend met the gasoline fuel specifications. However, other less-expensive blendstocks such as natural gasoline are currently available in the marketplace for which this is not necessarily true. Allowing the use of natural gasoline blendstock to produce E85 could lower the cost and increase the use of E85. Also, E16–50 blends are considered gasoline under the EPA's current regulations and are subject to all of the EPA regulatory requirements that apply to gasoline, even though such blends currently may only be used in FFVs. The gasoline refiner requirements also extend to service stations when E16–50 is produced at blender pumps. Gasoline refiners produce gasoline by refining crude oil or by mixing blendstocks of undefined quality in large volumes.[15] Hence, they are required to demonstrate compliance with EPA gasoline quality standards by testing each batch. However, these sampling, testing, recordkeeping, and reporting requirements are not suited to fuel retail. The purpose of this proposal is to ensure the quality of E16–83 blends used in FFVs and FFV emissions control performance while clearing the path for the greater use of E16–83 blends by aligning the EPA's fuel regulations with the current dynamics in the marketplace and making it clear which marketplace practices are and are not consistent with those regulations. We are proposing to refer to all higher level ethanol blends (E16–83) that may only be used in FFVs as ethanol flex fuel (EFF) and to regulate these blends in the same fashion.[16] We request comment on the proposed naming convention for E16–83 blends. This proposal allows several streamlined processes for certain parties that produce EFF to demonstrate compliance with the proposed standards. Parties that use these streamlined approaches would still be liable for standards violations, unless they could demonstrate that they met the affirmative defenses set forth in the regulations.

FFVs are vehicles that are designed to operate on any gasoline-ethanol mixture between pure gasoline (E0) and 85 percent denatured ethanol (E85). FFVs have been manufactured and introduced into commerce since 1996, and represent more than 6 percent of the current vehicle fleet and approximately 25 percent of new light-duty vehicles produced in 2014. Given that FFVs tend to be newer vehicles that are driven more than older vehicles, FFVs account for nearly 8 percent of all light-duty vehicle miles traveled.[17] However, the vast majority of fuel used in FFVs is currently gasoline.[18] Although the

[10] See 79 FR 23529 (April 28, 2014). FFVs are designed to operate on any gasoline-ethanol blend from 0 volume percent ethanol (E0) to 83 volume percent ethanol (E83).

[11] See 79 FR 23414, 23558 (April 28, 2014).

[12] E51–83 refers to gasoline-ethanol blends that contain from 51 volume percent to 83 volume percent ethanol.

[13] "E85" refers is to the maximum potential concentration of DFE in an E51–83 blend, assuming a 2 percent denaturant concentration in the DFE used to make E51–83. Industry consensus standards for E51–83 are found in ASTM D5798–14, "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines."

[14] See 78 FR 29818 (May 21, 2013) and "Possible Approach to Fuel Quality Standards for Fuel Used in Flexible-Fuel Automotive Spark-Ignition Vehicles (FFVs)" (Docket Item No. EPA–HQ–OAR–2011–0135–0529).

[15] The terms "refinery" and "refiner" are defined in 40 CFR 80.2(h) and (i), respectively.

[16] We understand that some parties currently refer to E51–83 as EFF. We believe that it will resolve confusion to refer to all higher level ethanol blends that may only be used in FFVs as EFF. In 2011, the EPA issued a partial waiver to allow 15 volume percent ethanol to be used in 2001 and later light duty motor vehicles (*i.e.*, conventional gasoline vehicles). See 76 FR 4662 (January 26, 2011). Should a similar waiver be issued in the future to allow the use of an ethanol blend greater than E15 (*e.g.*, E20) in conventional gasoline vehicles, such a blend would no longer be regulated as EFF and would be subject to the requirements for gasoline.

[17] EIA, "2015 Annual Energy Outlook," *http://www.eia.gov/forecasts/aeo/pdf/0383(2015).pdf.*

[18] In the RFS annual rulemaking for the 2014–2016 standards, we estimated that 150 million gallons of EFF was used in FFVs in 2014 compared

Message

From: Tillman, Nigel [tillman.nigel@epa.gov]
Sent: 1/20/2021 6:30:09 PM
To: Tillman, Nigel [tillman.nigel@epa.gov]
Subject: Welcome to the EPA
Attachments: Whistle Blower Rights Flyers.pdf; Prohibited Practices Flyer.pdf; Benefits Information.pdf; List of Acronyms Master List - Update 10-27-2020.xlsx; 2021 PayPeriodCalendar.pdf; 12-20-17 Employee Express Half Sheet Card - NON NASA.pdf

Welcome to the EPA!

I am your HR Benefits/Retirement contact here at the EPA. There are also some attached flyers regarding Whistleblower rights and Prohibited Practices as well. If you would like to go over these benefits please let me know when I'll be glad to set up a meeting.

Beneficiary Forms
There are four beneficiary forms. The Federal Employees Group Life Insurance (FEGLI) – SF 2823, Federal Employees Retirement System (FERS) – SF 3102, Unpaid Compensation – SF 1152 and Thrift Savings Plan- TSP-3. They are available at www.opm.gov/forms/standard-forms. There is a specific order of precedence. However, the completion of beneficiary forms is recommended to ensure the proper distribution of benefits. These beneficiary forms cannot be signed electronically. They must to be printed and signed by yourself and two witnesses. **If you have a middle name, you must include your full middle name as required by each form**. Otherwise, write 'NMN' for No Middle Name. These forms must be free of errors. You can complete, sign and submit via to my email address while also cc'ing my office's group email box ESB-SSC-RTP@epa.gov) for certification. The only exception is the TSP-3 Beneficiary form, that form needs to be mailed/faxed directly to TSP. You also need to wait until you receive your TSP account number in about 4-6 weeks, before sending in the beneficiary form.

Federal Employee Health Benefits (FEHB) and Federal Employee Group Life Insurance (FEGLI): FEHB and FEGLI enrollment forms must to be submitted directly through EODS. Here's a link to the Health Benefits Video from the Office of Personnel Management(OPM). This video goes over the majority of the health benefits offered to federal employees. OPM is the governmental body that regulates of the Federal policies that we as Federal employees adhere to. Other resources are the Quick Guide to FEHB, FEDVIP, FLTCIP, FSAFEDS and FEGLI and the Federal Benefits Fast Facts. These links can be used for additional information and facts. Remember, you have a sixty (60) day window from your Entry On Duty (EOD) to elect medical benefits or increase FEGLI coverages. **Your health insurance is effective at the beginning of the pay period AFTER you submit your SF-2809.** Please be sure to make your medical benefits and FEGLI increase elections through EODS.

If you want an Flexible spending account, you can enroll through www.FSAFEDS.com. The FSA does not provide a debit/card, and any reimbursement for claims must be done processed through their website or app. You have 60 days to enroll into a FSA account via FSAFEDS.

Dental/vision enrollment is completed through www.benefeds.com. The dental/vision benefits offered to federal employees are handled completely separate from the EPA. You must create an account with Benefeds if you wish to enroll. You have 60 days to enroll into dental/vision plan.

Employee Express (EEX): is the employee payroll portal. On this website you can change your mailing address, update your banking information, start/stop/change your TSP contributions, view your pay statements, set up discretionary allotments, etc. You should get an email from employee express in 3-5 days from your onboarding date, it should include an access code that will allow you to register for the website. Please let us know if you don't receive your access code.

Leave Bank: If you're interested in the leave bank program please view this link; Leave Bank. The Leave bank is a leave sharing program here at the EPA which is used to allow people to receive up to a maximum of 280 hours if you run out

of leave or don't have enough leave to cover certain situations. If you want to sign up for Leave Bank you have 30 days from your hire date to send the form to your leave bank coordinator.

Thrift Savings Plan: You are automatically enrolled into the TSP at 5%, at the start of your appointment. If you wish to stop your TSP, or increase it, please make the change via Employee Express. You should also get your TSP account information in the mail within 4-6 weeks of your onboarding. You will need your account information before sending in any TSP-3 beneficiary forms.

If you have any other questions please feel free to reach out to me anytime.

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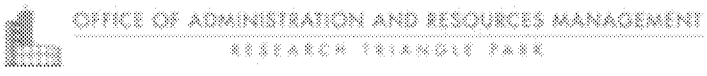

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EPA Acronyms

Column1	Column2
MPL	Microgram per Liter
ACS	Access Control Lists
ADR	Alternative Dispute Resolution
ADW	Administration Data Warehouse
AFO	Animal Feeding Operation
AFS	Aerometric Information Retrieval System (AIRS) Air Facilty Subsystem
AFS	Air Facility System (for CAA)
AIRS	Air Information Resource System
AIRS	Aerometric Information Retrieval System (for CAA)
ALLT	Allowance Inquiry Table
APBD	Annual Planning and Budget Division
APG	Annual Performance Goal
API	application program interface
APM	Annual Performance Measure
APPR	Appropriation
AQS	AIRS Quality Subsystem
ARPA	Advanced Research Projects Agency
ART	Architecture Repository and Tool
ARTS	Asbestos Receivable Tracking System
ASA	Administrative Systems Architecture
ATM	asynchronous transfer mode
ATS	Allowance Tracking System
AVS	application visualization system
AWS	Alternate Work Space
B&F	Buildings and Facilities
BAS	Budget Automated System
BASINS	Better Assessment Science Integrating Point and Nonpoint Sources
BDAT	Best Demonstrated Available Technology
BFY	Budget Fiscal Year
BioRS	Biology Registry System
BMAS	Border Manager Authentication Services
BMS	Brownfields Management System
BOC	Budget Object Class
BP	Best Practices
BPN	Business Partner Network (External System)
BPR	business process re-engineering
BRI	basic rate interface
BRM	Business Reference Model
BRS	Biennial Reporting System
C4ISR	Command, Control, Communications, Computer, Intelligence, Surveillance and Reconnaissance
CA	Chief Architect
CAA	Clean Air Act
CAFO	Concentrated Animal Feeding Operation
CAI	Confidential Agency Information
CAMD	Clean Air Markets Division
CAMEO	Computer Aided Management of Emergency Operations
CAS	QIC Collection and Access Subcommittee
CASE	Computer Aided Software Engineering
CAT	Category

EPA Acronyms

CBG	Census Block Groups
CBI	Confidential Business Information
CBITS	Confidential Business Information Tracking System
CC CRM	Commuter Choice Customer Relationship Management
CCA	Clinger-Cohen Act
CDC	Centers for Disease Control and Prevention
CDOTS	Contracts Delivery Order Tracking System
CDX	Central Data Exchange
CEPPO	Chemical Emergency Preparedness and Prevention Office
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act "Superfund" of 1980
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
CESQG	Conditionally Exempt Small Quantity Generator (under RCRA)
CFC	Chlorofluorocarbon(s)
CFEIS	Certification and Fuel Economy Information System
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CGM	Computer Graphics Metafile
CIO	Chief Information Officer
CLO	Closure Workload (under RCRA)
CLP	Contract Laboratory Program
CLPS	Continual Learning Points
CLPSS	Contract Laboratory Program Support System
CMD	Central Mail Directory
CMOS	Complementary Metal-Oxide Semiconductor
CO	Carbon Monoxide
COE	common operating environment
COOP	Continuity of Operations Plan
CORBA	Common Object Request Broker Architecture
COTS	Commercial Off-the-Shelf Software
CPARS	CPARS - Combined Payroll Redistribution and Reporting System
CPIC	Capital Planning and Investment Control
CPS	Contract Payment System
CPU	Central Processing Unit
CRADA	Cooperative Research and Development Agreement
CRM	Customer Relationship Management
CROMERRR	Cross-Media Electronic Reporting and Record-keeping Rule CRUD
CRS	Chemical Registry System
CRUD	Create, Read, Update, or Delete
CTO	Chief Technology Officer
CWA	Clean Water Act
CWNS	Clean Water Needs Survey
DBMS	Database Management System
DCN	Document Control Number
DKT	(Federal Enforcement) Docket
DMR	Discharge Monitoring Report
DNS	Domain Naming Service
Docket	Enforcement Docket System
DOD	Department of Defense
DOD AF	Department of Defense Architecture Framework
DOI	Deparment of the Interior
DRM	Data Reference Model

EPA Acronyms

DSL	Digital Subscriber Line
DSS	Decision Support Services
DST	decision support tool
DTD	document type definition
DTF	Data Transfer File
DVC	Desktop Video Conferencing
DW	Data Warehouse
EA	Enterprise Architecture
EAI	Enterprise Application Integration
EAP	Enterprise Architecture Plan
ECHO	Enforcement and Compliance History Online
ECOS	Environmental Council of the States
EDGAR	Electronic Data Gathering, Analysis, and Retrieval database (SEC)
EDI	Electronic Data Interchange
EDR	Environmental Data Registry
EDSC	Environmental Data Standards Council
EGU	electric generating units
EHPA	Environmental and Health Protection Architecture
EIA	Environmental Information Architecture
EIA	Enterprise Infrastructure Architecture
EIMS	Environmental Information Management System
EIS	Engine Information System
EMAD	Emission Modeling and Analysis Division
EP313	EPCRA Section 313 (established TRI)
EPA	Environmental Protection Agency
EPAYS	Environmental Protection Agency Payroll and Personnel System
EPCRA	Emergency Planning and Community Right-to-Know Act of 1986
EPM	Environmental Programs and Management
ER	Enterprise Repository
ERAMS	Environmental Radiation Ambient Monitoring System
ERD	Entity Relationship Diagrams
ERNS	Emergency Response Notification System
ESM	Enterprise Security Management
ETA	Enterprise Technology Architecture
ETL	Extraction, Transformation, Loading
ETL	Extract, Transform, and Load
ETS	Emissions Tracking System
FACTS	Federal Agencies' Centralized Trial Balance System
FAIR	Federal Activities Inventory Reform Act
FAQ	Frequently Asked Questions
FASA	Federal Acquisitions Streamlining Act
FBO	Federal Business Opportunities (External System) or FedBizOpps
FCE	Full Compliance Evaluation
FDDI	Fiber-Distributed Data Interface
FDM	Financial Data Mart
FDW	Financial Data Warehouse
FEA	Federal Enterprise Architecture
FEAF	Federal Enterprise Architecture Framework
FESOP	Federally Enforceable State Operating Permit (CAA program)
FFS	Federal Financial Systems
FGDC	Federal Geographic Data Committee

EPA Acronyms

FIFRA	Federal Insecticide, Fungicide and Rodenticide Act
FINRS	Financial Replacement System
FIP	Federal Implementation Plan (CAA program)
FMFIA	Federal Managers Financial Integrity Act
FOC	Finance Object Code
FOIA	Freedom of Information Act
FPDS	Federal Procurement Data System
FPDS-NG	Federal Procurement Data System - New Generation
FQPA	Food Quality Protection Act
FRED	Facilities Real Estate Database
FRS	Facility Registry Service
FSSC	Federal Supply Schedule Contract
FT	Fund Type
FTE	Full Time Equivalent
FTP	File Transfer Protocol
FTTS/NCDB	FIFRA-TSCA Tracking System/National Compliance Data Base
FY	Fiscal Year
GAO	U.S. Government Accountability Office
GB, MB, Mbps	Gigabyte, Megabyte, Megabit per second
GDDM	Graphical Data Display Manager
GDLI	Geospatial Data Library Index
GEMS	General Enforcement Management System
GICS	Grants Information and Control System
GIF	Graphics Image Format
GIS	Geographic Information System
GISRA	Government Information Security Reform Act
GPEA	Government Paperwork Elimination Act of 1998
GPM	Gallons per Minute
GPRA	Government Performance and Results Act of 1993
GPRA	Government Performance and Results Act
GPS	Global Positioning System
GSA	General Services Administration
GWAC	Government-wide Acquisition Contract
GWPS	Groundwater Protection Standard
GWRTAC	Groundwater Remediation Technologies Analysis Center
HAP	hazardous air pollutant
HASP	Health and Safety Program
HH&E	Human Health and Environment
HHS	Department of Health and Human Services
HP	Hewlett-Packard
HP	Horsepower
HPC	High Performance Computing
HPCC	High Performance Computing and Communications
HPV	High Priority Violator (under CAA; also see SNC)
HPVIS	High Production Volume - Information System
HQ	Agency Headquarters
HR-Pro	Human Resources Management System
HR-PTL	Human Resources Payroll, Time and Labor
HSWA	Hazardous and Solid Waste Amendments
HTTP	Hypertext Transfer Protocol
HTTPS	Secure Hypertext Transfer Protocol

EPA Acronyms

HWC	Hazardous Waste Combustors
HWIR	Hazardous Waste Identification Rule
I-3	Information Integration Initiative
I-3	Integrated Information Initiative
IAE	Integrated Acquisition Environment
IAG	Interagency Agreement
IAVI	Indoor Air Vapor Intrusion
IC	Institutional Control
ICIP	Institutional Control Implementation Plan
ICIS	Integrated Compliance Information System
ICMS	Integrated Contract Management System
ICR	Information Collection Request
ID	Identifier or Identification Number
IDEA	Integrated Data for Enforcement Analysis
IDEA	Integrated Data for Enforcement Analysis system
IDW	Investigation Derived Waste
IFMS	Integrated Financial Management System
IG	Inspector General
IGMS	Integrated Grants Management System
IGOR	Inspector General Operation and Reporting
IGORS	Intergovernmental Online Registry
I-GOTS	Intergovernmental Transactions System (External System)
IHZ	Intermediate Hydrogeologic Zone
IIP	Information Integration Program
IKE	Internet Key Exchange
IM	Interim Measure
IMMS	**Information Mail Management System**
IMMS	**Integrated Mail Management System**
IMWG	Information Management Work Group
IPA	Intergovernmental Personnel Act
IPSEC	IP security
IPv6	Internet Protocol Version 6
IRM	Information Resources Management
IRRS	Information Resource Registry System
ISCST	Industrial Source Complex Short Term
ISDN	Integrated Services Digital Network
ISP	Internet Service Provider
ISP	Information Systems Plan
IT	Information Technology
ITA	Information Technology Architecture
I-TIPS	Information Technology Investment Portfolio System
ITMRA	Information Technology Management Reform Act
ITPPD	Information Technology Policy and Planning Division
ITRC	Interstate Technology and Regulatory Council
ITS-EPA	Information Technology Solutions contract
IVPN	Integrated Vendor Profile Network
IVR	Interactive Voice Response
IWI	Index of Watershed Indicators
J&E	Johnson and Ettinger
J2EE	Java 2 Enterprise Edition
JFMIP	Joint Financial Management Implementation Program

EPA Acronyms

JPEG	Joint Photographic Enhancement Group
KSC	Kennedy Space Center
LAN	Local Area Network
LCS	Laboratory Computer System
LDIP	Locational Data Improvement Project
LDR	Land Disposal Restrictions
LEP	Licensed Environmental Professional
LIMS	Laboratory Information Management Systems
LMBCS	Lotus Multi-Byte Character Set
LNAPL	Light Non-Aqueous Phase Liquid
LQG	Large Quantity Generator (under RCRA)
LSP	Licensed Site Professional
LTG	Long Term Goal
LUST	Leaking Underground Storage Tank
M4I	Model for Information Integration
MACT	Maximum Achievable Control Technology (CAA program)
MAIA	Mid-Atlantic Integrated Assessment
MAN	Metropolitan Area Network
MARS	Management Accounting Reporting System (IFMS subsystem)
MCI	Multipoint Control Unit
MCL	Maximum Contaminant Level
MDC	Monitoring Data Checker
mg/kg	Milligram per Kilogram
MHS	Message Handling System
MHz	Megahertz
MI DEQ	Michigan Department of Environmental Quality
MIME	Multipurpose Internet Mail Extensions
MIP	Membrane Interface Probe
MIPS	Millions of Instructions Per Second
MNA	Monitored Natural Attenuation
MOA	Memorandum of Agreement
MOLAP	Multidimensional On-line Analytical Processing
MOU	Memorandum of Understanding
MPE	Multiphase Extraction
MPEG	Moving JPEG
MPH	Miles per Hour
MPP	massively parallel processing
MPSRA	Marine Protection Research and Sanctuaries Act
MTR	Minimum Technology Requirements
MW	Monitoring Well
MYP	Multi-Year Plan
NAAQS	National Ambient Air Quality Standards
NAPL	Non-Aqueous Phase Liquid
NASA	National Aeronautics and Space Administration
NC	Noncompliance
NCC	National Computer Center
NCD	Network Computing Devices
NCDB	National Compliance Database
NCP	National Contingency Plan
NDD	Notes Domino Directory
NDS	NetWare Directory Services

EPA Acronyms

NDS	Novell Directory Services
NEI	National Emissions Inventory
NEIEN	National Environmental Information Exchange Network
NESC	National Environmental Supercomputing Center
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NESHAP	National Emission System for Hazardous Air Pollutants (CAA program)
NetBEUI	NetBIOS Extended User Interface
NFA	No Further Action
NHD/RAD	National Hydrography Dataset Reach Address Database
NIC	Network Interface Card
NIF	NEI Input Format
NIH	National Institutes of Health
NLFWA	National Listing of Fish and Wildlife Advisories
NOAA	National Oceanic and Atmospheric Administration
NOS	Network Operating System
NOV	Notice of Violation
NOx	Nitrogen Oxides
NPD	National Program Directors
NPDES	National Pollutant Discharge Elimination System
NPDES	National Pollutant Discharge Elimination System
NPDES	National Pollutant Discharge Elimination System (CWA permit program)
NPL	National Priorities List
NPM	National Program Managers
NPV	Net Present Value
NRDC	Natural Resources Defense Council
NSC	Network Systems Corporation
NSI	National Security Information
NSPS	New Source Performance Standards (CAA program)
NSR	New Source Review (CAA program)
NTFS	New Technology File System
NTIS	National Technical Information Services
NTSD	National Technology Services Division
O&M	Operation and Maintenance
O/O	Owner or Operator
OAM	Office of Acquisition Management
OAR	Office of Air and Radiation
OARM	Office of Administrative and Resources Management
OBI	Open Buying on the Internet
OBLR	Office of Brownfields and Land Revitalization
ODBC	Open Data Base Connectivity
ODN	Obligating Document Number
ODS	Operational Data Store
OECA	Office of Enforcement and Compliance Assurance
OEI	Office of Environmental Information
OGD	Office of Grants and Debarment
OGWDW	Office of Ground Water and Drinking Water
OIC	Office of Information Collection
OLAP	On-line Analytical Processing
OLTP	Online Transactional Processing
OMB	Office of Management and Budget
OMIS	ORD Management Information System

EPA Acronyms

OMS	Ozone Mapping System
OPA	Oil Pollution Act
OPPIN	Office of Pesticide Programs Information Network
OPPTS	Office of Prevention, Pesticides, and Toxic Substances
ORD	Office of Research and Development
ORP	Oxidation-Reduction Potential
OS	Operating System
OSC	On-Scene Coordinators
OSHA	Occupational Safety and Health Administration
OSRTI	Office of Superfund Remediation and Technology Innovation
OSWER	Office of Solid Waste and Emergency Response
OTIS	**Online Targeting Information System**
OTIS	**Online Tracking Information System**
OTOP	Office of Technology, Operations and Planning
OW	Office of Water
P&T	Pump and Treat
PA DEP	Pennsylvania Department of Environmental Protection
PAA	Program Area Analysis
PAH	Polycyclic Aromatic Hydrocarbon
PBT	Persistent, Bioaccumlative Toxicant
PBX	Private Branch Exchange
PCA	Permitting and Corrective Action
PCB	polychlorinated biphenyl
PCB	Polychlorinated Biphenyl
PCE	Tetrachloroethylene (PERC)
PCL	Printer Control Language
PCS	Permit Compliance System
PDA	personal digital assistant
PDB	Passive Diffusion Bag
PE	Professional Engineer
PERS	Performance and Environmental Results System
PFP	Protective for People Under Current Conditions
PG	Professional Geologist
PHC	Principal Hazardous Constituent
PID	Photoionization Detector
PM	particulate matter
PMA	President's Management Agenda
PMT	Permit Workload (under RCRA)
POC	Point of Contact
POI	Program Office Interface
POTW	Publicly Owned Treatment Works
PPA	Prospective Purchaser Agreement
PPB	Part per Billion
PPE	Personal Protective Equipment
PPM	Part per Million
PPRS	Personnel & Payroll Reporting System
PPTP	Point-to-Point Tunneling Protocol
PR/SR	Place Registry/Spatial Repository
PRB	Permeable Reactive Barrier
PRC	Program Results Code
PRGs	Preliminary Remediation Goals

EPA Acronyms

PRI	primary rate interface
PRM	Performance Reference Model
Prog/Proj	Program Project Code
PRS	Payroll Replacement System
PSD	Prevention of Significant Deterioration (CAA program)
PSN	Public Switched Network
PTM	Product/Technology Matrix
PWSS	Public Water Supply Supervision
QA	Quality Assurance
QA/QC	Quality Assurance/Quality Control
QAPP	Quality Assurance Project Plan/Program
QC	Quality Control
QEIC	Qualitative Environmental Indicators of Contamination
QIC	Quality Information Council
QNCR	Quarterly Noncompliance Report (under CWA)
QSAM	Queued Sequential Access Method
QTS	QIC Technology Subcommittee
RA	Remedial Action OR Risk Assessment
RACER	Remedial Action Cost Engineering and Requirements System
RACF	Resource Access Control Facility
RAD	Rapid Application Development
RAINS	Rapid Access Information System
RAM	Random Access Memory
RAO	Remedial Action Objective
RAP	Remedial Action Plan
RAS	Remote Access Server
RAU	Land Ready for Anticipated Uses
RC	Responsibility Centers
RCR	RCRAInfo
RCRA	Resource Conservation and Recovery Act of 1976
RCRIS	Resource Conservation and Recovery Information System
RDA	Research and Development Architecture
RDBMS	relational database management system
REI	Reinventing Environmental Information
RF1	Reach File 1
RFA	RCRA Facility Assessment
RFI	RCRA Facility Investigation
RFP	request for proposal
RfR	Ready for Reuse
RI	Remedial Investigation
RNC	Reportable Noncompliance (under CWA)
ROLAP	Relational On-line Analytical Processing
RPIO	Responsible Planning Implementation Officer
RPO	regional planning organization
RQ	Requisition Documents
RSE	Remedial System Evaluation
RSO	Remedial System Optimization
RTC	Response to Comments
RTKNet	Right-to-Know Network (non-EPA site)
RTP	Research Triangle Park
RW	Recovery Wells

EPA Acronyms

S&T	Science and Technology
S/S	Solidification/Stabilization
SA	Security Architecture
SAM	Security Access Method
SAP	Simplified Acquisition Process
SARA	Superfund Amendments and Reauthorization Act
SAWG	Solutions Architecture Workgroup
SB	Statement of Basis
SBA	Small Business Administration
SCM	Supply Chain Management
SCORPIOS	Superfund Cost Recovery Package and Image On-Line System
SDLC	system development life cycle
SDWA	Safe Drinking Water Act
SDWARS	Safe Drinking Water Access and Review System
SDWIS	Safe Drinking Water Information System
SEC	U.S. Securities and Exchange Commission
SEP	Supplemental Environmental Project
SERDP	Strategic Environmental Research and Development Program
SFIP	Sector Facility Indexing Project
SGI	Silicon Graphics, Inc.
SHEMP	Safety, Health and Environmental Management Program
SIC	Standard Industrial Classification code
SIM	STORET Interface Module
SIP	State Implementation Plan (under CAA)
SITE	Superfund Innovative Technology Evaluation
SLC	System Life Cycle
SMF	Systems Modernization Fund
SMP	symmetric multiprocessing
SMTP	Simple Mail Transfer Protocol
SNA	Systems Network Architecture
SNAP	Superfund National Priorities List Assessment Program
SNC	Significant Noncompliance (also see HPV)
SoA	System of Access
SOAP	Simple Object Application Protocol
SOP	Standard Operating Procedure
SOx	Sulfur Oxides
SPEDI	Small Purchase Electronic Data Interchange
SPITS	Small Purchase Information Tracking System
SPX/IPX	Sequenced Package Exchange/Internetwork Packet Exchange
SQG	Small Quantity Generator (under RCRA)
SQL	Structured Query Language
SRM	Service Component Reference Model
SRMP	System for Risk Management Plans
SRS	Substance Registry System
SSL	Secure Sockets Layer
STAR	Science to Achieve Results
STORET	**Storage and Retrieval System**
STORET	**Water Quality Information System**
SV-1	System View-1
SVE	Soil Vapor Extraction
SVOC	Semi-Volatile Organic Compound

EPA Acronyms

SWMU	Solid Waste Management Unit
T&A	Time and Attendance
TA	Technology Architecture
TAA	Target Applications Architecture
TAB	Technical Assistance to Brownfields Communities
TACACS	Terminal Access Controller Access Control System
TACM	Technology Architecture Change Management
TAPP	Transboundary Air Pollution Project - Personnel System (EPAYS subsystem)
TC	Toxicity Characteristic
TCA	Trichloroethane
TCE	Trichloroethylene or Trichloroethene
TCLP	Toxicity Characteristic Leaching Procedure
TCP/IP	Transmission Control Protocol/Internet Protocol
TEAF	Treasury Enterprise Architecture Framework
TI	Technical Impracticability
TIFF	Tagged Image File Format
TIMS	Tribal Information Management System
TM	Travel Manager
TMDL	total maximum daily loads
TNT	Trinitrotoluene
TOSC	Technical Outreach Services for Communities
TPH	Total Petroleum Hydrocarbons
TRAQ	Transportation Air Quality
TRC	Technical Review Criteria (under CWA)
TRI	Toxics Release Inventory
TRI ME	TRI Made Easy
TRIS	**Toxics Release Inventory System**
TRIS	**Toxic Chemical Release Inventory System**
TRM	Technical Reference Model
TSC	Technical Support Center
TSCA	Toxic Substances Control Act of 1976
TSCREEN	Toxics Screening
TSD	Treatment, Storage, or Disposal facility (under RCRA)
TSDF	Treatment, Storage, and Disposal Facility
TSS	Transit Subsidy System
TSSMS	Time Sharing System Management System
TTN	Technology Transfer Network
TU	Temporary Unit
UAO	Unilateral Administrative Order
UE	Unrestricted Exposure
UHC	Underlying Hazardous Constituents
USACE	U.S. Army Corps of Engineers
USB	Universal Serial Bus
USES	United States Employment Service
USGS	United States Geological Survey
USSGL	U.S. Government Standard General Ledger
UST	Underground Storage Tank
UTS	Universal Treatment Standards
UV	Ultraviolet
UVA	University of Virginia
VADEQ	Virginia Department of Environmental Quality

EPA Acronyms

VC	Vinyl Chloride
VCP	Voluntary Cleanup Program
VI	Vapor Intrusion
VMT	vehicle miles traveled
VOCs	Volatile Organic Compounds
VPN	Virtual Private Network
VSAM	Virtual Storage Access Method
WAN	Wide Area Network
WCF	Working Capital Fund
WIPP	Waste Isolation Pilot Plant
WME	Window to My Environment
WOS	Working Capital Fund Operations System
WQSDB	Water Quality Standards Database
WWW	World Wide Web
XML	Extensible Markup Language
XRF	X-ray Fluorescence
ZIP	Zone Improvement Plan [code]

Column1	Column2
AA	Assistant Administrator
AERE	Association of Environmental and Resource Economists
AIRMON	Atmospheric Integrated Research Monitoring Network
AO	Approving Official
B&F	Building and Facility
BAA	Board of Assistance Appeals
BAS	Budget Automation System
BFY	Budget Fiscal Year
BMP	Best Management Practice
BOSC	Board of Scientific Counselors
CAAA	Clean Air Act Amendments
CASAC	Clean Air Science Advisory Committee
CDC	Center for Disease Control
CEC	Commission for Environmental Cooperation
CF	Conservation Foundation
CIO	Chief Information Officer
COI	Conflict of Interest
CO	Contracting Officer
COR	Contracting Officer's Representative
CSS	Chemical Safety for Sustainability
CWA	Clean Water Act
CY	Calendar Year
DAA	Deputy Assistant Administrator
DDEF	Data Derived Extrapolation Factors
DOE	Department of Energy
DOJ	Department of Justice
DWEL	Drinking Water Equivalent Level
DWS	Drinking Water Standard
EAR	Environmental Auditing Roundtable
EDDP	Environmental Due Diligence Process
EDSP	Endocrine Disruption Screening Program
EIL	Environmental Impairment Liability
EMS	Environmental Management System
EPAAG	Environmental Protection Agency Acquisition Guide
ESD	Environmental Sciences Division
ESH	Environmental Safety and Health
ESML	EcoService Models Library
FACA	Federal Advisory Committee Act
FCO	Funds Control Officer
FDA	Food and Drug Administration
FEMA	Federal Emergency Management Agency
FFIS	Federal Facilities Information System
FIAT	Fast International Approval of Travel
FITARA	Federal Information Technology Acquisition Reform Act
FLC	Federal Laboratory Consortium
FMFIA	Federal Managers' Financial Integrity Act Assurance Letter

FOIA	Freedom of Information Act
FRC	Federal Records Center
FTE	Full Time Equivalent
FY	Fiscal Year
GAO	U.S. Government Accountability Office
GFO	Grant Funding Order
GI	Green Infrastructure
GIS	Geographic Information Systems
GMSA	Grants Management Self- Assessment
GOCO	Government–Owned/Contractor Operated
GPRA	Government Performance and Results Act
GSA	General Services Administration
HA	Health Advisory
HERO	Health and Environmental Research Online
HHRA	Human Health Risk Assessment
HHS	U.S. Department of Health and Human Services
HIA	Health Impact Assessment
HICO	Hyperspectral Imager for the Coastal Ocean
HISA	Highly Influential Scientific Assessments
HPMS	Highway Performance Monitoring System
HQ	Head Quarters
HSR	Human Subjects Research
HSRP	Homeland Security Research Program
IAQ	Indoor Air Quality
ICLUS	Integrated Climate and Land Use Scenarios
IOAA	Immediate Office of the Assistant Administrator
IPCC	Intergovernmental Panel on Climate Change
IRIS	Integrated Risk Information System
IRMS	Integrated Resources Management System
ISAs	Integrated Science Assessments
ISTD	Integrated Systems Toxicology Division
ITR	International Trip Report
ITRC	Interstate Technology and Regulatory Council
JAPCA	Journal of Air Pollution Control Association
JEIOG	Joint Emissions Inventory Oversight Group
JRO	Junior Resource Official
LCO	Lab, Center, Office
LD	Land Disposal
LEP	Laboratory Evaluation Program
MI	Management Integrity
MOE	Margin of Exposure
MOST	Ministry of Science and Technology
MOU	Memorandum of Understanding
MRF	Materials Recovery Facility
NAAEC	North American Agreement on Environmental Cooperation
NAAQS	National Ambient Air Quality Standards
NACEPT	National Advisory Council for Environmental Policy and Technology

NARA	National Archives and Records Administration
NAS	National Academy of Sciences
NASA	National Aeronautics and Space Administration
NCAR	National Center for Atmospheric Research
NCCT	National Center for Computational Toxicology
NCER	National Center for Environmental Research
NERL	National Exposure Research Laboratory
NETA	National Environmental Training Association
NGAM	Next Generation Air Monitoring
NGOs	Non-Governmental Organizations
NHEERL	National Health & Environmental Effects Research Laboratory
NHSRC	National Homeland Security Research Center
NICHD	National Institute of Child Health and Human Development
NIEHS	National Institute of Environmental Health Sciences
NIFA	National Institute of Food and Agriculture
NIH	National Institute of Health
NIMHD	National Institute of Minority Health and Health Disparities
NIST	National Institute of Standards Technology
NOAA	National Oceanic and Atmospheric Administration
NPDs	National Program Directors
NRC	National Research Council
NRMRL	National Risk Management Research Laboratory
NSF	National Science Foundation
OAM	Office of Acquisition Management
OAQPS	Office of Air Quality Planning and Standards
OARM	Office of Administration and Resources Management
OARS	Office of Administrative and Research Support
OB	Office of Budget
OCFO	Office of Chief Financial Officer
OCSPP	Office of Chemical Safety and Pollution Prevention
OECA	Office of Enforcement and Compliance Assurance
OEI	Office of Environmental Information
OEM	Office of Emergency Management
OGC	Office of General Counsel
OGD	Office of Grants and Debarment
OHR	Office of Human Resources
OIG	Office of Inspector General
OITA	Office of International and Tribal Affairs
OMB	Office of Management and Budget
OMIS	Office of Research and Development Management Information System
OPARM	Office of Program Accountability and Resource Management
OPM	Office of Personnel Management
ORD	Office of Research and Development
ORP	Oxidation Reduction Potential
OSA	Office of the Science Advisor
OSIM	Office of Science Information Management
OSP	Office of Science Policy

OSTP	Office of Science and Technology Policy
OSWER	Office of Solid Waste and Emergency Response
OTR	Ozone Transport Region
OW	Office of Water
OWEP	Office of Research and Development Workforce Enhancement Project
PAM	Pesticide Analytical Manual
PAMP	Grants Post Award Monitoring Plan
PARS	Performance Appraisal and Recognition System
PFCs	Perfluorinated Chemicals
PFNA	Perfluorononanoic Acid
PIMS	Pesticide Incident Monitoring System
PM	Particulate Matter
PMD	Property Management Database
PO	Project Officer
POS	Program Operations Support
PPE	Personal Protective Equipment
QA	Quality Assurance
QAARWP	Quality Assurance Annual Report and Work Plan
QAC	Quality Assurance Coordinator
QCI	Quality Control Index
QMP	Quality Management Plan
QS	Quality Staff
QSA	Quality System Assessment
RAP	Research Action Plan
RCP	Research Centers Program
RESES	Regional Sustainable Environmental Sciences Research Program
RISK	Risk Assessment Training and Experience
RLO	Records Liaisons Officers
RMIS	Resources Management Information System
RMS	Research Management System
ROE	Report on the Environment
RSL	Regional Science Liaisons
SAB	Science Advisory Board
SAM	Selected Analytical Methods for Environmental Remediation and Recovery
SAP	Scientific Advisory Panel
SBA	Small Business Administration
SBIR	Small Business Innovation Research
SDWA	Safe Drinking Water Act
SHEM	Safety Health and Environmental Management Program
SHEMD	Safety Health and Environmental Management Division
SHMS	Safety and Health Management System
SMD	Security Management Division
SOP	Standard Operating Procedures
SRO	Senior Resource Official
SSC	State Superfund Contracts
SSWR	Safe and Sustainable Water Resources
STAA	Scientific and Technological Achievement Award

STAR	Science to Achieve Results
STEM	Science, Technology, Engineering, and Math
STICS	Scientific and Technical Information Clearance System
STL	Superfund Technical Liaison
STPC	Science and Technology Policy Council
StRAPs	Strategic Research Action Plans
STTR	Small Business Technology Transfer
TP	Total Particulates
TQB	Technical Qualifications Board
TRLN	Triangle Research Library Network
TSCA	Toxic Substances Control Act
UAQI	Uniform Air Quality Index
UC	Unauthorized Commitment
UGG	Uniform Grants Guidance
USDA	U.S. Department of Agriculture
USDW	Underground Sources of Drinking Water
USGS	U.S. Geological Survey
VEO	Visible Emission Observation
VSI	Visual Site Inspection
WAVE	Water Alliances for Environmental Efficiency
WERL	Water Engineering Research Laboratory
WMOST	Watershed Management Optimization Support Tool
WRF	Weather Research and Forecast
WSTB	Water Security Test Bed
WTIC	Water Technology Innovation Cluster
ZEV	Zero Emissions Vehicle
ZRL	Zero Risk Level

Column1
ACS
AIRS
APG
ASA
AWS
BMAS
CAI
CAT
CBI
CCA
CDX
CERCLA
CERCLIS
CIO
CMOS
COTS
CPIC
CROMERRR
DBMS
Docket
DSL
DVC
DW
EAP
ECOS
EDR
EIA
EIMS
EPA
EPAYS
ERD
ETA
ETL
FASA
FDDI
FEAF
FOIA
FRS
FTP
GB, MB, Mbps
GDLI
GEMS
GIS
GISRA
GPEA
GPRA

Column2
Access Control Lists
Air Information Resource System
Annual Performance Goals
Administrative Systems Architecture
Alternate Work Space
Border Manager Authentication Services
Confidential Agency Information
Category
Confidential Business Information
Clinger-Cohen Act
Central Data Exchange
Comprehensive Environmental Response, Compensation, and Liability Act
Comprehensive Environmental Response, Compensation, and Liability Information System
Chief Information Officer
Complementary Metal-Oxide Semiconductor
Commercial Off-the-Shelf Software
Capital Planning and Investment Control
Cross-Media Electronic Reporting and Record-keeping Rule CRUD
Database Management System
Enforcement Docket System
Digital Subscriber Line
Desktop Video Conferencing
Data Warehouse
Enterprise Architecture Plan
Environmental Council of States
Environmental Data Registry
Enterprise Infrastructure Architecture
Environmental Information Management System
Environmental Protection Agency
Environmental Protection Agency Payroll and Personnel System
Entity Relationship Diagrams
Enterprise Technical Architecture
Extract, Transform, and Load
Federal Acquisitions Streamlining Act
Fiber-Distributed Data Interface
Federal Enterprise Architecture Framework
Freedom of Information Act
Facility Registry System
File Transfer Protocol
Gigabyte, Megabyte, Megabit per second
Geospatial Data Library Index
General Enforcement Management System
Geographical Information Systems
Government Information Security Reform Act
Government Paperwork Elimination Act
Government Performance and Results Act

HP
HPC
HPCC
HQ
HTTP
HTTPS
I-3
ICIS
ICR
IDEA
IG
IIP
IKE
IMMS
IMWG
IPv6
IRM
ISDN
ISP
IT
ITA
ITMRA
ITPPD
LAN
LDIP
LMBCS
MAN
MCI
MHS
MHz
MIME
MIPS
MOLAP
NAAQS
NCC
NCD
NCDB
NDS
NESC
NetBEUI
NOS
NPDES
NSC
NTSD
OAR
OECA
OEI

Hewlett-Packard
High Performance Computing
High Performance Computing and Communications
Agency Headquarters
Hypertext Transfer Protocol
Secure Hypertext Transfer Protocol
Information Integration Initiative
Integrated Compliance Information System
Information Collection Request
Integrated Data for Enforcement Analysis system
Inspector General
Information Integration Program
Internet Key Exchange
Integrated Mail Management System
Information Management Work Group
Internet Protocol Version 6
Information Resources Management
Integrated Services Digital Network
Information Systems Plan
Information Technology
Information Technology Architecture
Information Technology Management Reform Act
Information Technology Policy and Planning Division
Local Area Network
Locational Data Improvement Project
Lotus Multi-Byte Character Set
Metropolitan Area Network
Multipoint Control Unit
Message Handling System
Megahertz
Multipurpose Internet Mail Extensions
Millions of Instructions Per Second
Multidimensional On-line Analytical Processing
National Ambient Air Quality Standards
National Computer Center
Network Computing Devices
National Compliance Database
Novell Directory Services
National Environmental Supercomputing Center
NetBIOS Extended User Interface
Network Operating System
National Pollution Discharge Elimination System
Network Systems Corporation
National Technology Services Division
Office of Air and Radiation
Office of Enforcement and Compliance Assurance
Office of Environmental Information

OIC
OLAP
OMB
OPPIN
OPPTS
ORD
OSC
OSWER
OTOP
OW
PCS
PDA
PR/SR
QIC
RACF
RAM
RAS
RCRA
RCRIS
REI
ROLAP
RTP
SDWIS
SGI
SMF
SMTP
SNA
SPX/IPX
SSL
STORET
TACACS
TCP/IP
TRI
TRIS
TRM
UST
VPN
WAN
XML

Office of Information Collection
On-line Analytical Processing
Office of Management and Budget
Office of Pesticide Programs Information Network
Office of Prevention, Pesticides, and Toxic Substances
Office of Research and Development
On-Scene Coordinators
Office of Solid Waste and Emergency Response
Office of Technology, Operations and Planning
Office of Water
Permit Compliance System
Personal Digital Assistant
Place Registry/Spatial Repository
Quality and Information Council
Resource Access Control Facility
Random Access Memory
Remote Access Server
Resource Conservation and Recovery Act
Resource Conservation and Recovery Information System
Reinventing Environmental Information
Relational On-line Analytical Processing
Research Triangle Park
Safe Drinking Water Information System
Silicon Graphics, Inc.
Systems Modernization Fund
Simple Mail Transfer Protocol
Systems Network Architecture
Sequenced Package Exchange/Internetwork Packet Exchange
Secure Sockets Layer
Water Quality Information System
Terminal Access Controller Access Control System
Transmission Control Protocol / Internet Protocol
Toxic Release Inventory
Toxic Chemical Release Inventory System
Technical Reference Model
Underground Storage Tank
Virtual Private Network
Wide Area Network
Extensible Markup Language

Column1	Column2
ALLT	Allowance Inquiry Table
APPR	Appropriation
B&F	Buildings and Facilities
BAS	Budget Automated System
BFY	Budget Fiscal Year
BOC	Budget Object Class
CRADA	Cooperative Research and Development Agreement
DCN	Document Control Number
EAS	EPA Acquistion System
EPM	Environmental Programs and Management
FCO	Financial Certifying Officer
FOC	Finance Object Code
FT	Fund Type
FTE	Full Time Equivalent
FY	Fiscal Year
GPRA	Government Performance and Results Act
IAG	Interagency Agreement
IPA	Interagency Personnel Agreement
LTG	Long Term Goal
MYP	Multi-Year Plan
NPD	National Program Directors
ODN	Obligating Document Number
PRC	Program Results Code
Prog/Proj	Program Project Code
RC	Responsibility Centers
RPIO	Responsible Program Implementation Office
RQ	Requisition Documents
S&T	Science and Technology
STAR	Science to Achieve Results
WCF	Working Capital Fund

Column 1
AEMB
AITSSS
AOD
CAD
CMB
CACD
DMSD
DOES
DRB
EPS
ESHPB
FACMD
FMSD
HAD
HOB
HRD
HRSD
HSB
IAASD
IEPB
IESD
ITAD
ITSSB
ITSSS
LDB
LERD
NPTCD
OA
OARM
OARM-CINC-SSC
OARM-RTP-SSC
OAS
OCAPPM
ODSTA
OEIP
OGD
OHR
OHR-IO
OIM
OISP
OMS
OMS-OEI
OMS-IO
ORBO
PMD
PPED

Column 2
Architecture and Engineering Management Branch
Administrative Information Technology Systems Support Staff
Administrative Operations Division
Cincinnati Acquisition Division
Category Management Branch
Customer Advocacy and Communications Division
Data Management Services Division
Diversity Outreach and Employees Services Division (formerly Diversity, Recruitment and Employee Services Division
Diversity and Outreach Branch (formerly Diversity and Recruitment Branch)
EPA Print Shop
Environmental, Safety and Health Programs Branch
Federal Advisory Committee Management Division
Facilities Management and Services Division
Headquarters Acquisition Division
Headquarters Operations Branch
Human Resources Division
HR Systems Division (formerly HRI Systems Management Staff)
Headquarters Services Branch
Information Accesss and Analysis Service Division
Information Exchange Partnership Branch
Information Exchange Services Division
Information Technology Acquistion Division
Information Technology Systems and Services Branch
Information Technology Systems Security Staff
Learning and Development Branch (formerly Policy, Planning and Training Division)
Labor and Employee Relations Division
National Policy Training and Compliance Division
Office of Administration
Office of Administration and Resources Management
Office of Administration and Resources Management, Cincinnati, Shared Service Center
Office of Administrative and Resources Management, Research Triangle Park Shared Service Center
Office of Acquisition Solutions
Office of Customer Advocacy, Policy and Portfolio Management
Office of Digital Services and Technical Architecture
Office of Enterprise Information Programs
Office of Grants and Debarment
Office of Human Resources
Office of Human Resources, Immediate Office
Office of Information Management
Office of Information Security and Privacy
Office of Mission Support
Office of Mission Support, Office of Environmental Information
Office of Mission Support, Immediate Office
Office of Resources and Business Operations
Portfolio Management Division
Policy , Planning and Evaluation Division

PSB
PSPB
PTOD
RPAMB
RPSD
SMD
SSD
STSB
WCSD
WSB

Personnel Security Branch
Physical Security and Preparedness Branch
Policy Training and Oversight Division
Real Property and Management Branch
Real Property Services Division
Security Management Division
Safety and Sustainability Division
Sustainable and Transportation Solutions Branch
Web Content Services Division
Workforce Strategy Branch (formerly Policy, Planning and Training Division)

Column 1
AO
DOES
DRESD
ESB
FFRRO
FMSD
IO
LERD
OAM
OAR
OARM
OARM-CIN
OARM-RTP
OAS
OA-SMD
OBLR
OCAPPM
OCFO
OCPA
OCIR
OCR
OCSPP
ODSTA
OECA
OEIP
OEM
OEX
OGC
OGD
OHR
OIG
OIM
OISP
OITA
OITO
OM
OMS-IO
OPA
ORBO
ORD
OLEM
OMIS
OMS
OMS-OA-SMD-PSPB
OP
PPTD

Column 2
Office of the Administrator
Diversity, Outreach and Employee Service (Same office as DRESD)
Diversity, Recruitment and Employee Service Division
Employee Services Branch
Federal Facilities Restoration and Reuse Office
Facilities Management and Services Division
Immediate Office
Laboor, and Employee Relations Division
Office of Acquisition Management
Office of Air and Radiation
Office of Administrative Resource Management
Office of Administrative Resource Management - Cincinnati
Office of Administrative Resources Management - Research Triangle Pa
Office of Acquistion Solutions
Office of Administration, Security Management Division
Office of Brownfields and Land Revitalization
Office of Customer Advocacy, Policy and Portfolio Management
Office of the Chief Finance Officer
Office of Communications, Partnerships and Analysis
Office of Congressional and Intergovernmental Relations
Office of Civil Rights
Office of Communications, Partnerships and Analysis
Office of Digital Services and Technical Architecture
Office Enforcement and Compliance Assurance
Office of Enterprise Information Programs
Office of Emergency Management
Office of the Executive Secretariat
Office of General Council
Office of Grants and Debardment
Office of Human Resources
Office of the Inspector General
Office of Information Management
Office of Information Security and Privacy
Office of International and Tribal Affairs
Office of Information Technology Operations
Office of Multimedia
Office of Mission Support, Immediate Office
Office of Public Affairs
Office of Resources and Business Operations
Office of Research and Development
Office of Land and Emergency Management
Organizational Management and Integrity Staff
Office of Mission Support
Office of Mission Support, Office of Administration, Security Management Division, Personnel Security Branch
Office of Policy
Policy, Planning and Training Division

PSB
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RTP
R1
R2
R3
R4
R5
R6
R7
R8
R9
R10

Personnel Security Branch
Office of Resource Conservation and Recovery
Office of Research and Development
Office of Small and Disadvantaged Business Utilization
Office of Superfund Remediation and Technology Innovation
Office Underground Storage Tanks
Office of Science and Technology
Office of Ground Water and Drinking Water
Office of Water
Office of Wastewater Management
Office of Wetlands, Oceans and Watersheds
Research Triangle Park
Region 1
Region 2
Region 3
Region 4
Region 5
Region 6
Region 7
Region 8
Region 9
Region 10

Message

From: Shoaff, John [Shoaff.John@epa.gov]
Sent: 1/27/2021 10:50:39 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Hockstad, Leif [Hockstad.Leif@epa.gov]; Kopits, Elizabeth [Kopits.Elizabeth@epa.gov]; McGartland, Al [McGartland.Al@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Edwards, Jonathan [Edwards.Jonathan@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]; Wolfson, Steve [Wolfson.Steve@epa.gov]
CC: Campbell, Ann [Campbell.Ann@epa.gov]; OAR Briefings [OAR_Briefings@epa.gov]
Subject: Backgrounder for BCA discussion tomorrow (Thurs) at 4:00
Attachments: BCA Fact Sheet UPDATE 01-27-21 OAR mtg2.docx

All,

With thanks to our diligent BCA-team, please find attached the background for our discussion tomorrow. Thank you!

John

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | **1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE**

Message

From: Chris Miller [cmiller@ajw-inc.com]
Sent: 3/15/2021 7:02:20 PM
To: Jessica Bennett [jbennett@ajw-inc.com]
CC: Joseph Goffman (Goffman.Joseph@epamail.epa.gov) [goffman.joseph@epamail.epa.gov]
Subject: Re: EPA/CRA

pls try one or both of these -
goffman.joseph@epamail.epa.gov
goffman.joseph@epa.gov

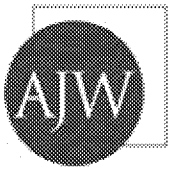
you can also copy his staff assistant Delaney - rakosnik.delaney@epa.gov

---

From: Jessica Bennett <jbennett@ajw-inc.com>
Sent: Monday, March 15, 2021 2:18 PM
To: Chris Miller <cmiller@ajw-inc.com>
Subject: EPA/CRA

I know we had corresponded about potentially sending a note to Joe Goffman on CRA's behalf, similar to what I sent to Radha. That said, I don't have an email for him other than the transition email address. If you still think it is a good idea, do you mind to send his email along? I

Jessica Johnson Bennett
Partner, AJW-Inc
Mobile ~ 202.420.8666
jbennett@ajw-inc.com



Message

From: Joseph Goffman [joegoffmar Ex. 6 Personal Privacy (PP)
Sent: 1/20/2021 5:27:21 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Rules for Review List from WH Fact Sheet

U.S. ENVIRONMENTAL PROTECTION AGENCY

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Paul Miller [pmiller@nescaum.org]
Sent: 3/12/2021 3:35:10 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
CC: Wayland, Richard [Wayland.Richard@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Johnson, Steffan [johnson.steffan@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Segall, Martha [Segall.Martha@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Wood, Anna [Wood.Anna@epa.gov]; Lassiter, Penny [Lassiter.Penny@epa.gov]; French, Chuck [French.Chuck@epa.gov]; Lisa Rector [lrector@nescaum.org]
Subject: Advance copy of NESCAUM report reviewing EPA's residential wood heaters NSPS Step 2 certification program
Attachments: nescaum-review-of-epa-rwh-nsps-certification-program-202103.pdf

Hi Joe and Tomás,
Please find attached a NESCAUM report we're publicly posting on our website next Monday, March 15th. The report presents the results of a review by NESCAUM on the adequacy of the residential wood heater NSPS Step 2 certification program. We developed this report in coordination with on-going reviews by the Alaska Department of Environmental Conservation looking at wood device testing reports submitted to EPA for Step 2 certification. We've been discussing our concerns about the certification program with your staff since last September, and these results should not be a surprise. In sum, we feel there are serious problems with the way wood burning devices (stoves and central heaters) are certified for compliance with Step 2. This is regardless of whether there's intentional manipulation of the testing, or arguably allowed under the existing test methods.

We are not doing a press release when the report goes public, but we and AK have had interviews with reporters from Alaska Public Media and The Guardian, and I expect they'll do stories early next week.

We will continue to work constructively with EPA staff to address these issues, and are looking forward to future progress. -Paul

Paul J. Miller, Executive Director
Northeast States for Coordinated Air Use Management (NESCAUM)
89 South St., Suite 602
Boston, MA 02111
Ph: 617-259-2016
www.nescaum.org

2021

Assessment of EPA's Residential Wood Heater Certification Program

Test Report Review: Stoves & Central Heaters

NESCAUM

www.nescaum.org

Members of Northeast States for Coordinated Air Use Management

Paul J. Miller, Executive Director
Northeast States for Coordinated Air Use Management

Tracy Babbidge, Bureau Chief
Connecticut Department of Energy and Environmental Protection, Bureau of Air Management

Jeff Crawford, Bureau Director
Maine Department of Environmental Protection, Bureau of Air Quality

Glenn Keith, Director
Massachusetts Department of Environmental Protection, Air and Climate Programs

Craig Wright, Director
New Hampshire Department of Environmental Services, Air Resources Division

Francis Steitz, Director
New Jersey Department of Environmental Protection, Division of Air Quality

Chris LaLone, Acting Director
New York Department of Environmental Conservation, Division of Air Resources

Laurie Grandchamp, Chief
Rhode Island Department of Environmental Management, Office of Air Resources

Heidi Hales, Director
Vermont Department of Environmental Conservation, Air Quality & Climate Division

EPA-HQ-2021-5551

ASSESSMENT OF EPA'S RESIDENTIAL WOOD HEATER CERTIFICATION PROGRAM

Test Report Review: Stoves & Central Heaters

Project Manager

Lisa Rector, NESCAUM

Principal Contributors

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Northeast States for Coordinated Air Use Management (NESCAUM)
Boston, Massachusetts

Printed: March 2021

EPA-HQ-2021-5551

Summary for Policymakers

The Northeast States for Coordinated Air Use Management (NESCAUM) in collaboration with the Alaska Department of Environmental Conservation (ADEC) conducted a review of the US Environmental Protection Agency's (EPA's) program to certify that new wood stoves and central heaters meet air pollution standards. For the over 250 certified wood heaters reviewed, this report finds a systemic failure of the entire certification process, including EPA's oversight and enforcement of its requirements. Wood heater manufacturers and the EPA-approved test laboratories they use for certification testing often deviate from test method requirements and the manufacturers' owner's manual instructions, creating the appearance of artificially lowering emissions in the lab in order to meet the certification standards. The descriptions of the wood heaters given in test reports do not always agree with what the manufacturers advertise in their marketing materials. All test reports have missing data elements.

Many of these discrepancies and omissions are clear violations of EPA requirements. Supposedly independent third-party reviewers are charged with flagging these problems, but do not. In fact, EPA notified the testing labs and third-party reviewers of some of the identified testing issues in 2019, but after that notice, this review found more recent test reports continuing to employ the same practices, and EPA continuing to approve them.

The unavoidable conclusion of this report is that EPA's certification program to ensure new wood heaters meet clean air requirements is dysfunctional. It is easily manipulated by manufacturers and testing laboratories. EPA has done little to no oversight and enforcement. Starting in 1988 when EPA first adopted air pollution standards for new wood stoves, it has never conducted a single audit to verify that a wood heater actually performs consistent with its certification test results, a span of over 30 years.

This raises serious concerns for state and local air quality and public health agencies. These agencies rely on a robust and credible certification program to address air pollution problems and public health harms caused by residential wood combustion. In order to protect public health, the agencies are pursuing policies to incentivize cleaner wood burning devices in communities suffering from high levels of wood smoke pollution. This includes providing financial incentives for the exchange of older devices with cleaner new wood heaters. If EPA's program for certifying wood heaters is not assuring that new devices are in fact cleaner than the ones they are replacing, then these efforts may be providing no health benefits while wasting scarce resources.

At its core, EPA's program as currently run allows the continued sale and installation of high-emitting devices, many of which will be in homes located in overburdened communities already suffering from environmental and other inequities. Once installed, these units will remain in use, emitting pollution for decades to come.

EPA-HQ-2021-5551

Acknowledgments and Disclaimers

This report was a joint effort between staff at NESCAUM and the Alaska Department of Environmental Conservation. NESCAUM's portion of this work was made possible by funding support provided by the New York State Energy Research and Development Authority (NYSERDA). The opinions expressed in this report do not necessarily reflect those of NYSERDA or the States of Alaska and New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, NYSERDA, the States of Alaska and New York, and NESCAUM make no warranties or representations, expressed or implied, as to the fitness for a particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. NYSERDA, the States of Alaska and New York, and NESCAUM make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of the information contained, described, disclosed, or referred to in this report.

NESCAUM would like to thank the following individuals for supporting or providing assistance to this effort:

Mr. Randy Orr, New York State Department of Environmental Conservation; Mr. Kenneth Newkirk, New York State Department of Environmental Conservation; Mr. Marc Cohen, Massachusetts Department of Environmental Protection; Ms. Cindy Heil, Alaska Department of Environmental Conservation; Mr. Steven Hoke, Alaska Department of Environmental Protection; Mr. Nick Czarnecki, Fairbanks North Star Borough; Mr. Steffan Johnson, U.S. Environmental Protection Agency; Mr. Michael Toney, U.S. Environmental Protection Agency; Dr. Rafael Sanchez, U.S. Environmental Protection Agency, and Mr. Patrick Yellin, U.S. Environmental Protection Agency.

NESCAUM is a 501(c)(3) nonprofit association of eight state air quality agencies in the northeast United States whose mission is to provide technical and policy support to the air quality and climate programs of its member states. More information about NESCAUM is available at www.nescaum.org.

TABLE OF CONTENTS

Summary for Policymakers iii

Acknowledgments and Disclaimers iv

Glossary viii

Executive Summary x

1. Introduction 1

2. Background on the Residential Wood Heating Sector 4
   - 2.1. Residential Wood Heating Emissions and Public Health Impacts 4
   - 2.2. Uses of the EPA Certification Program 8
     - 2.2.1. State and Local Regulations 8
     - 2.2.2. Tax Incentives and Rebates 8
     - 2.2.3. Change-out Programs 8
   - 2.3. EPA Certification Process 9
     - 2.3.1. Third-Party Report Review 11
     - 2.3.2. Third-Party Compliance Assurance Monitoring Programs 11
     - 2.3.3. Approved Laboratories 12
   - 2.4. EPA Certification Test Methods 13
     - 2.4.1. Emission Measurement Methods 13
     - 2.4.2. Operation and Fueling Protocol for Stoves 13
     - 2.4.3. Operation and Fueling Protocol for Central Heaters 14
     - 2.4.4. Alternative Test Methods 15

3. Methodology 16
   - 3.1. Study Approach 16
   - 3.2. Review Elements 19
     - 3.2.1. Report Completeness 20
     - 3.2.2. Recommendation for Action – 40 CFR § 60.533/60.5475(l) 21
   - 3.3. Recommendation for Action – 40 CFR § 60.533(n)/60.5475(n) 22
   - 3.4. Recommendation for No Action 22

4. Review findings 23
   - 4.1. Cordwood Stoves 23
     - 4.1.1. Complete Test Reports 23
     - 4.1.2. Revocation Criteria – Testing Irregularities – Mandatory Reporting Elements 25
     - 4.1.3. Revocation Criteria – Compliance with § 60.536 Requirements 27
     - 4.1.4. Revocation Criteria – Failure to Follow Test Methods 31
     - 4.1.5. Revocation Criteria – Documentation of Low Burn Rate Testing 35
     - 4.1.6. Audit Criteria – ASTM 3053 Test Reports 36
     - 4.1.7. Summary of Cordwood Stove Certification Test Reports 44
   - 4.2. Pellet Stoves 44
     - 4.2.1. Complete Test Reports 44
     - 4.2.2. Revocation Criteria – Testing Irregularities 47
     - 4.2.3. Revocation Criteria – Compliance with § 60.536 Requirements 47

EPA-HQ-2021-5551

4.2.4. Revocation Criteria – Failure to Follow Test Methods 48
4.2.5. Revocation Criteria – Low Burn Rate Testing 52
4.2.6. Summary of Pellet Stove Certification Test Reports 52
4.3. Central Heaters 53
4.3.1. Test Report Completeness 53
4.3.2. Revocation Criteria – Testing Irregularities 56
4.3.3. Compliance with § 60.5478 Requirements 56
4.3.4. Revocation Criteria – Test Methods 57
4.3.5. Revocation Criteria – Low Burn Rate Testing Revocation Criteria – Failure to Follow Test Methods 59
4.3.6. Summary of Central Heating Certification Test Reports 59
4.4. Overarching Issues 60
4.4.1. Summary Reports 60
4.4.2. Owner's Manual 60
4.4.3. First-hour Values 61
4.4.4. Audit Criteria – Laboratory Receipt Dates 63
4.4.5. Audit Criteria – Laboratory Pre-testing 64
4.4.6. Audit Criteria – Appliance Modifications During and After Testing 65
4.4.7. Compliance Assurance Plans 65
4.4.8. Compliance Audits 66
4.4.9. Sales Reporting Requirements 66

5. Recommendations and Conclusions 67
5.1. Program Issues 67
5.2. Recommendations for Program Improvement 69
5.2.1. Third-Party Review Process 69
5.2.2. Enforcement of Certification Test Results 69
5.2.3. Targeting Public Funding to Cleanest Appliances 70
5.2.4. Improving Certification Test Methods 70
5.2.5. OECA Enforcement and Oversight 70
5.2.6. Program Transparency 71
5.2.7. Investigating EPA Program Oversight and Enforcement 71
5.3. Conclusions 71

Bibliography 73

FIGURES

Figure 1. 2018 National Survey - Reported Age of Woodstove 2
Figure 2. Contributions by Source Category to National $PM_{2.5}$ Inventory (2017 NEI) 5
Figure 3. Energy Use for Residential Heating by Fuel Type (BTUs) 5
Figure 4. Fuel Combustion PM2.5 Emissions by Sector (tons per year) 6
Figure 5. Example of the Review Template for Cordwood Stoves 17
Figure 6. Cordwood Stove Certification Test Report Completeness 25
Figure 7. Fuel Loading Configuration – Stove 9 30
Figure 8. Comparison of Emissions Rates (g/hr) in Tests on Two (2) Step 2 Certified Stoves 31
Figure 9. Three Common Fuel Loading Configurations for Cordwood Stoves 39
Figure 10. Emission Impact of Fuel Piece Configuration 39
Figure 11. ASTM 3053-17 Comparison of Low, Medium, & High Burn Rates 40
Figure 12. Number of ASTM 3053 Deficiencies per Test Report 42
Figure 13. Certification Reports that Continued to Include Questionable Activities after June 2019 EPA OAQPS-MTG Email (40 total reports) 43
Figure 14. Pellet Stove Report Completeness Assessment 46
Figure 15. Low, Medium, High Burn Rates for Step 2 Pellet Stoves 50
Figure 16. Assessment of Central Heating Report Completeness 55
Figure 17. Certification Values vs. Peak First-hour Values for Cordwood Stoves 62
Figure 18. Certification Values vs. Peak First-hour Values for Pellet Stoves 62
Figure 19. Certification Values vs. Peak First-hour Values for Central Heaters 63
Figure 20. Sales Data Supplied by EPA 66
Figure 21. Summary of Report Completeness 67

TABLES

Table 1. Comparison of Key Characteristics of EPA and ASTM Test Methods 14
Table 2. Comparison of Test Methods for Hydronic Heaters 15
Table 3. Assessment of Report Completeness – Cordwood Stoves 24
Table 4. Summary of Cordwood Stove Test Report Reviews Deficiencies 44
Table 5. Assessment of Pellet Stove Report Completeness 45
Table 6. Summary of Pellet Stove Test Report Reviews Deficiencies 53
Table 7. Assessment of Report Completeness – Central Heaters 55
Table 8. Summary of Central Heating Test Report Review Deficiencies 60
Table 9. Summary of Missing Owner's Manual Elements 61
Table 10. Summary of Reports with Date Issues 64
Table 11. Summary of Test Report Review Deficiencies 68

GLOSSARY

Annual Fuel Use Efficiency (AFUE) –The percentage of heat delivered to a home over a year. AFUE differs from "thermal efficiency" in that it assesses performance over a variety of loads and transitional states.

Appliance – A wood heater subject to the Residential Wood Heater (RWH) New Source Performance Standards (NSPS).

ASTM – ASTM International, formerly known as the American Society for Testing and Materials, is an international organization that develops voluntary technical standards.

ASTM 2515 – The ASTM method for measuring particulate matter (PM) in a dilution tunnel. This method is identified as a federal reference method in the RWH NSPS.

ASTM 2618 – The ASTM method for measuring PM emissions from pellet and cordwood boilers. This method is identified as a federal reference method in the RWH NSPS.

ASTM 2779 – The ASTM method for measuring PM emissions from pellet stoves. This method is identified as a federal reference method in the RWH NSPS.

ASTM 2780 – The ASTM method for measuring PM emissions from cordwood stoves burning dimensional lumber. This method is identified as a federal reference method in the RWH NSPS.

ASTM 3053 – The ASTM method for measuring PM emissions from cordwood stoves burning cordwood. This method was approved as a broadly applicable alternative test method for certifications under the RWH NSPS.

CBI – Confidential business information.

Combustion Efficiency – The measure of combustion completeness, how well the appliance burns the fuel. This metric does not reflect the appliance's ability to deliver heat.

CSA B415 – Canadian Standard B415, "Performance Testing Of Solid-Fuel-Burning Stoves, Inserts, and Low-Burn-Rate Factory-Built Fireplaces."

Delivered Efficiency – A measurement of the energy delivered as heat to the building.

HHV – Higher Heating Value of Wood, a measurement of the actual usable energy from the fuel. This value includes the water and hydrogen content of the fuel.

LHV – Lower Heating Value of Wood. This value excludes the water and hydrogen content of the fuel. LHV efficiency values are, on average, 5-10 percent higher than HHV efficiencies.

M5G – The EPA method for measuring PM in a dilution tunnel.

M28 – The EPA method for measuring PM in a dilution tunnel from cordwood stoves using dimensional lumber.

M28 WHH – EPA M28 for Wood-fired Hydronic Heating Appliances.

EPA-HQ-2021-5551

Nominal Output – The maximum hourly output of an appliance.

New Source Performance Standards, NSPS or RWH NSPS – EPA's "Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces," 89 Fed. Reg. 13672-13753 (March 16, 2015).

RWH – Residential Wood Heating.

Stack Loss Efficiency (SLM) – A measure of efficiency based on fuel input minus all flue gas loss. This measure does not include jacket loss calculations. This is a theoretical calculation of delivered heat.

Thermal Efficiency – Efficiency as determined using the input/output method described in M28 OWHH.

Thermal Storage – A liquid-filled tank that stores excess heat generated by a wood heating appliance.

Executive Summary

In 2015, the U.S. Environmental Protection Agency (EPA) adopted new emission standards for residential wood burning appliances under the Residential Wood Heater New Source Performance Standards (RWH NSPS).[1] These were the first revisions to the standards since 1988, a span of over 25 years, and included consideration of more advanced wood burning technologies and encompassed more wood heater appliance types than under the 1988 standards. The RWH NSPS rule was fully implemented through two steps, with the more stringent Step 2 numerical emission standards going into effect in May 2020.

While the new RWH NSPS requirements were long sought by state and local air quality officials, the final RWH NSPS program as implemented has raised serious concerns about the program's efficacy and the extent to which the updated RWH NSPS will provide in-use emission reductions commensurate with those standards. The 2015 RWH NSPS introduced the use of third-party certifiers accredited by the International Standards Organization (ISO) to implement several critical elements of the new rule, including reviewing certification test reports and conducting compliance inspections. The third-party reviewers are paid by the manufacturers and are often the same companies that perform the certification testing, creating a potential conflict of interest.

Based on these concerns, this study was undertaken to evaluate the effectiveness of the current framework that uses ISO-accreditation and EPA approval to qualify testing labs and an ISO-accredited third-party review to complete a test report review and issue a certificate of conformity, which then becomes part of an application package that goes to EPA's Office of Compliance Assurance (OECA) for review and certification. In this report, results are presented from reviews of available emission certification test reports for almost 250 appliances approved by EPA as compliant with the Step 2 emission standards under the 2015 RWH NSPS. The reviews evaluated (1) completeness of the certification test report data sets, (2) consistency of the EPA-approved test results, and (3) error magnitudes where they can be estimated. The analysis was conducted at the "screening" level, and was intended to identify areas where significant problems exist with the certification testing for which more detailed review by EPA may be warranted. It was not a full and complete review of the test reports, which likely would have revealed many more problems.

The analysis found persistent failures by EPA-approved labs to follow test methods and by third-party reviewers and EPA to identify deficiencies. The review also found a lack of effective oversight and enforcement by EPA. As a result, the existing program

[1] *Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces*, 80 Fed. Reg. 13672-13753 (March 16, 2015).

provides no confidence that new residential wood heaters are performing in a manner that better protects public health than the heaters they replace, and at the level required by federal standards. This has critical implications not only for public health, but also for the perceived cost-effectiveness of investments in residential wood heater change-out programs and tax credits given for the purchase of new wood burning appliances.

The study found that certification laboratories, sometimes at the manufacturer's direction, routinely employ atypical burn practices to improve the emission performance of wood heating devices during certification testing. These unusual practices are not commonly followed by the owners of these appliances after retail sale, and therefore are unlikely to represent actual in-use performance. In June 2019, EPA sent an email to ISO-accredited and EPA-approved labs and third-party certifiers identifying "discrepancies and concerns" it had observed in submitted test reports related to atypical test conditions. The reviewers in this study identified 40 reports certified after EPA sent its email in June 2019. The review found that all 40 of those certified test reports continued to contain at least one of the problematic test practices that EPA had explicitly identified as raising concerns.

There were also instances of prototypes being used for certification testing that are described with different physical parameters (e.g., firebox sizes) than the production models placed into retail sale that they are intended to represent. Different physical parameters between a tested prototype and the model offered for sale can adversely affect conclusions about in-use emissions performance.

In addition to the testing irregularities, this study uncovered a host of attendant issues that further undermine the program's integrity. EPA appears to have not completed any compliance audits in the more than 30 years since the original RWH NSPS rule in 1988. Compliance audits done strategically should be standard practice to verify units in the home perform in a manner consistent with their certification test results completed in the EPA-approved lab. The 2015 RWH NSPS program also lacks transparency as state and local agencies, along with the public, do not have easy access to sufficiently detailed certification test results and enforcement data that could be used to assess appliance performance.

States and communities with wood smoke pollution problems and a desire to reduce air toxics emissions rely on EPA's program to provide air quality improvements. However, EPA's failure to provide oversight and ensure the veracity of certification testing seriously undercuts the integrity of the RWH NSPS program and the likelihood that emission reductions are actually occurring, and sets the course for continued high emissions from new devices for years to come. To address this systemic problem, this study provides a set of recommendations to create a robust and effective RWH NSPS

program. Some of the existing program weaknesses can be minimized through a commitment by EPA to enforce current requirements according to the clear language of the RWH NSPS. Others must be addressed through rule changes or as part of the next update to this NSPS, which is due in 2023.

ES-1. Background

Cordwood, pellets, and wood chips are important fuels for primary and secondary residential heating in the United States. According to the U.S. Energy Information Agency (EIA), 12.5 million homes (11 percent of the national total) used wood as an energy source in 2015, mainly for space heating. Wood heating reduces dependence on fossil fuels and promotes a local, indigenous fuel source. However, wood-burning is also a significant source of criteria and toxic air pollutant emissions.

Based on EPA's 2017 National Emissions Inventory (NEI), residential wood combustion emits approximately 340,000 tons of primary $PM_{2.5}$ annually, making it the largest direct source of particulate matter pollution in the country after road dust and fires (wildfire and prescribed).[2,3] Furthermore, a recent study has concluded that the level of wood burning may be significantly higher than represented by the NEI data.[4] These emissions have serious public health consequences, as residential wood heating can account for 10,000 to 40,000 premature deaths annually in the United States.[5,6] In states with large numbers of residential wood heating appliances, this emission source dominates health impacts from air pollution, especially during colder months.

State and local air quality agencies rely on standards and testing through EPA's emission certification program under the 2015 RWH NSPS to reduce emissions from new wood burning devices and to help attain and maintain the fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Residential wood heating is a primary cause of nonattainment of the NAAQS for $PM_{2.5}$ in some areas. However, the

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[2] US EPA. *2017 National Emission Inventory* (April 2020). Available at: https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data.

[3] Primary PM is emitted directly from the source, as opposed to secondary particulate pollution that is created when sources emit precursor air contaminants, such as oxides of sulfur (SOx), oxides of nitrogen (NOx), volatile organic compounds (VOCs), and ammonia (NH_3), into the atmosphere that through chemical and physical processes form or help form $PM_{2.5}$.

[4] Commission for Environmental Cooperation. *Residential Wood Use Survey to Improve Black Carbon Emissions Inventory Data for Small-Scale Biomass Combustion*, Final Report. CEC, Montreal, Canada, (April 2019).

[5] Penn SL, Arunachalam S, Woody M, Heiger-Bernays W, Tripodis Y, Levy JI. Estimating state-specific contributions to $PM_{2.5}$- and O_3-related health burden from residential combustion and electricity generating unit emissions in the United States, *Environ Health Perspect* 125:324–332 (2017), http://dx.doi.org/10.1289/EHP550.

[6] Ciaizzo F, Ashok A, Waitz IA, Yim SHL, Barrett SRH. Air pollution and early deaths in the United States. Part I: Quantifying the impact of major sectors in 2005, *Atmospheric Environment* 79:198-208, (2013), https://doi.org/10.1016/j.atmosenv.2013.05.081.

true scale of nonattainment is difficult to quantify because there are few regulatory air quality monitors located in rural areas where wood burning is most prevalent.

Residential wood heaters have a long useful life, therefore the benefits of new emission standards accrue slowly. To accelerate the turnover of older higher emitting appliances, government agencies, manufacturers, and nonprofit groups are investing millions of dollars in change-out programs. States and the federal government also offer tax credits that provide consumers with financial incentives to upgrade to new, presumably cleaner-burning wood heaters. In recognition of the public health impacts and financial stakes, this study was undertaken to investigate concerns about efficacy of the testing, review, and certification process adopted in the 2015 rule, and EPA's oversight and enforcement of the overall certification process.

ES-2. Methodology

In undertaking this study, the research team created a list of certification test reports to review using EPA's wood heater database to identify models that had been certified as Step 2 compliant. The team identified 131 cordwood stoves, 96 pellet stoves, and 28 central heating appliances that met these criteria, for a total of 255 devices. The 2015 RWH NSPS requires that a manufacturer post on its website a complete test report and summary report within 30 days of receiving certification, therefore the team attempted to locate all the test reports and post them to a central repository. However, difficulties were encountered finding some of the Step 2 appliance test reports, primarily pellet stove reports. Some manufacturers posted links to incorrect reports. In other instances, the reports could not be found after exhaustive online searches and a detailed review of the manufacturer's website. In some cases, reports were located with assistance from EPA. In total, 13 reports could not be found, and the team was unable to complete reviews of those certification test results.

For the 242 located reports, the next step in the process was to examine applicable regulations and guidance to identify criteria that would serve as the review's foundation. A regulatory basis document was created to catalog the review elements and the applicable regulatory citations. Given the large number of reports to review, the team chose to conduct a screening-level analysis focused on completeness of the reports, elements that could trigger certification revocation procedures, and elements that could trigger compliance audits of the tested devices.

Individual reviewers examined the test reports and entered data from these into a spreadsheet tool, which automatically created a preliminary determination as to whether significant problems existed with the certification testing for specific models based on the number of flags generated by data inputs. The initial reviewer was also able to include

notes, comments, and recommendations. The review tool automatically generated warning flags based on data input to allow for objective determinations rather than subjective opinions. Once reviewers completed the data input, the review tool automatically generated summary sheets, which underwent review by a committee comprised of staff from multiple state and local air quality agencies. After assessing the findings, the committee arrived at a final determination on the adequacy of each certification test.

ES-3. Findings

This section summarizes the results of the investigation and provides examples from test reports to highlight the emission ramifications associated with some testing variables and assumptions. The analysis found considerable testing and review irregularities across all three categories of residential wood heating devices: cordwood stoves, pellet stoves, and central heating systems. Similar deficiencies were found on models from all three categories. For the purposes of brevity, this Executive Summary focuses primarily on the cumulative analysis results. Some specific issues with test assumptions and decisions identified through this investigation are highlighted as examples of the larger universe of failures uncovered. Readers are encouraged to review the full report for more scope and detail on the findings for specific aspects of the study.

ES-3.1.1. Cordwood Stove Findings

Reviewers identified 131 cordwood stoves for review. Of the 131 appliances targeted, reports could not be located for two appliances. None of the remaining 129 reports was determined to be complete. On average, the review found 8 revocation elements and 8 audit elements per test report. Deviations included failure to report mandatory elements, improper fueling procedures, and inaccurate firebox measurements.

ES-3.1.2. Pellet Stove Findings

The team identified 96 Step 2 certified pellet stove models to review as part of this research, but 10 test reports could not be found. Of the 86 pellet stove tests reviewed, all contained deficiencies, with an average of four revocation elements and five audit elements per test report. Although the rule requires EPA to review these reports for completeness, not a single report analyzed as part of this study was complete, yet each of these stoves was certified by EPA. Additionally, reports did not include mandatory elements such as PM measurements (6 appliances missing 1-hr filter data) or CO data (8 appliances had no data and 13 tests reported "zero" for CO emissions). Seventy-three percent of test reports contained contradictory information such as the Btu output from high load testing not matching the advertised Btu output.

ES-3.1.3. Central Heating System Findings

Reviewers identified 28 appliances for test report review; 15 cordwood boilers, 8 pellet boilers, 1 chip boiler, and 3 cordwood furnaces. None of the reports contained complete datasets or documented appliance settings to determine how the system operated during certification testing. All central heating unit test reports were incomplete. One test report could not be found. The review found that on average each central heating test report contained 9 revocation criteria flags and 12 audit criteria flags. The amount of data missing from each test report made it impossible to complete a full review of any of the 27 located reports.

ES-4. Recommendations for Program Improvement

A strong and broad response is needed to correct the failures of the RWH NSPS program identified through this study. Some of these program weaknesses can be minimized in the near-term if EPA makes a firm commitment, and follows through in good faith, to fully enforce the existing requirements according to the clear language of the RWH NSPS. Others must be addressed through rule changes.

ES-4.1. Third-Party Review Process

The EPA Inspector General should conduct an investigation of the third-party review system, and the responsible ISO bodies should call for an inquiry into their accreditation processes. EPA-approved laboratories that conduct certification testing should not be eligible to participate in the third-party review process. EPA should initiate action against third-party certifiers that have not adhered to test method and rule requirements. Finally, EPA should reassess the validity and viability of the third-party review process as a cornerstone of this program in the next update to the RWH NSPS.

ES-4.2. Review of Certification Test Results

EPA should conduct a detailed review of the problematic certification test reports identified in this study. The Agency should hold hearings and, where appropriate, revoke certification for models failing to meet the 2015 RWH NSPS rule requirements.

The findings of this report suggest that some manufacturers and EPA-approved laboratories may be "optimizing" certification tests to qualify models as Step 2 compliant by employing methods inconsistent with the approved protocols. At a minimum, models should undergo compliance audits as allowed per 40 CFR § 60.533(n) to verify the ability of production units to meet the emission standards to which the prototype was certified. To date, EPA has not conducted a single compliance audit during the more than 30 years this program has been in place. To address this, EPA should implement routine compliance audits on 10 percent of appliances each year. The audits should begin by targeting stove models that conducted non-representative tests. Appliances should not be

allowed to recertify their appliances without retesting. Waiver provisions that allow manufacturers to avoid retesting of appliances should be eliminated. Retesting should require addressing deficiencies identified in the appliance review sheets, and remote witnessing of testing.

ES-4.3. Targeting Public Funding to Appropriate Appliances

Government funds for wood heater change-out programs should be used only for the cleanest appliances with valid test reports. Government agencies and nonprofits funding change-out programs should disqualify units that are certified as Step 2 compliant but fail to meet the rule's requirements. Taxpayer-supported incentive programs, such as the 26 percent federal tax credit created under the BTU Act, EPA Targeted Airshed grants, and state-supported activities, should only apply to those appliances included on the list of approved models developed by the Alaska Department of Environmental Conservation. This currently is the only thorough review of certification test reports applying the 2015 RWH NSPS requirements.

ES-4.4. Improving Certification Test Methods

Current cordwood test methods used to certify residential wood heaters are poorly designed and often lack the specificity to ensure viable and comparable emission results. EPA should revoke or modify problematic test methods. The ASTM 3053 test should be revoked as a Broadly Applicable Test Method. EPA should expedite rulemaking or guidance to close loopholes and reduce deficiencies in ASTM and CSA test methods. Over the longer term, EPA should fully fund efforts to develop new test methods that bring integrity, reliability, and reality to testing outcomes.

ES-4.5. OECA Enforcement and Oversight

EPA should establish residential wood heaters as a high priority enforcement sector and immediately begin a permanent and effective enforcement initiative. EPA should take enforcement action against third-party certifiers that do not adhere to method and rule requirements. Enforcement action should be taken under 40 CFR § 50.535(b) against EPA-approved laboratories that fail to follow required procedures or practices with the goal of assuring lab independence and competence while eliminating coordination between labs and manufacturers that inappropriately "optimize" test results and modify appliances during testing. Finally, EPA should request a revision to ISO procedures to ensure the certification system's integrity and competence.

ES-4.6. Program Transparency

The results of this analysis demonstrate that significant improvements in transparency are needed for the certification and enforcement components of the RWH NSPS. For example, EPA-approved laboratory inspections and compliance assurance activities are

treated as confidential business information (CBI). There is no clear justification why these elements would be considered CBI as they do not pertain to typical CBI elements, such as product designs or manufacturing processes. Instead, EPA should eliminate claims of CBI for all compliance assurance monitoring activities. EPA should develop a strategy to ensure all manufacturers post complete non-CBI test reports and take enforcement action against all manufacturers who post incomplete non-CBI test reports, as defined by the rule. EPA should eliminate the use of confidential ISO compliance assurance audits, and all audit findings should be posted on the Enforcement and Compliance History Online (ECHO) database maintained by EPA. EPA should develop and require the use of a standardized certification report template.

ES-4.7. Investigating EPA Program Oversight and Enforcement

The EPA Inspector General or Congress should conduct a review of EPA's OECA and Office of Air Quality Planning and Standards (OAQPS) with a focus on identifying practices to improve Agency oversight and enforcement of the 2015 RWH NSPS program.

ES-5. Conclusions

This study covered 255 Step 2 certified wood heater models (131 cordwood stoves, 96 pellet stoves and 28 central heating appliances) to assess the ability of EPA's program to assure compliance with RWH NSPS regulations. Thirteen of the identified models did not have publicly available certification test reports, as required by the regulations. For the remainder, no report was found to be complete and in full compliance with RWH NSPS requirements. Seventy-two percent of the ISO/EPA certified reports contained issues listed as Criteria for Revocation of Certification under the 2015 RWH NSPS; 24 percent of the test reports were too incomplete to make determinations; and the remaining 4 percent had minor issues.

The third-party certification review process is highly ineffective at identifying and reporting testing irregularities. The documented failures in the third-party process may be due to poor program design, the lack of competency of the groups involved, improper complicity between third-party reviewers and manufacturers, or some combination of the three. Study results also highlight the lack of EPA's use of the auditing program to ensure production models are substantially similar to the prototypes used in certification testing, and that those offered for sale are meeting the applicable emission standards.

This analysis also uncovered a lack of transparency in the RWH NSPS program. Reviewers were often unable to access key data and information on certification testing. An overly broad assertion of confidential business information has removed non-proprietary compliance assurance activities from public review.

EPA-HQ-2021-5551

Based on the identified shortcomings in this review, the 2015 RWH NSPS certification program fails to assure that new residential wood heaters are uniformly cleaner than past devices before the new standards went into effect. A flawed testing and review system coupled with a historical lack of EPA enforcement of basic program elements work in tandem to undermine the public health goals of the program. The end result is a program devoid of any credibility to ensure that new residential wood heating appliances are meeting federal emission standards, and instead gives every indication that scarce public resources are being misspent on incentive programs meant to encourage the more rapid introduction of cleaner wood burning appliances that truly reduce emissions.

1. INTRODUCTION

In 1988, EPA first established emissions limits for new residential wood heaters (RWH) under the Clean Air Act provisions governing New Source Performance Standards (NSPS). In 2015, EPA updated its original RWH NSPS rule using a two-step process to phase in more stringent emission standards. The initial "Step 1" limits generally aligned with the then-current emissions performance of most covered devices, while more stringent "Step 2" emissions limits took effect for new wood burning appliances sold after May 15, 2020. This was intended to provide manufacturers with a period of several years to design and manufacture cleaner devices.

A wood heater model line is certified as compliant with the RWH NSPS emissions limits if emissions from a prototype appliance, as measured by an EPA-approved testing laboratory, conform to the rule requirements. The 2015 RWH NSPS updates retained key elements of the previous 1988 RWH NSPS rule, allowing manufacturers to test a prototype to certify a model line. However, EPA delegated critical program oversight and compliance assurance activities traditionally performed by EPA to International Standards Organization (ISO) accredited third-party certifiers approved by EPA. Those activities include certification and competency assessments of the EPA-approved test laboratories, review of test reports, and annual inspections to confirm that manufactured appliances reasonably reflect the prototype used for certification testing.

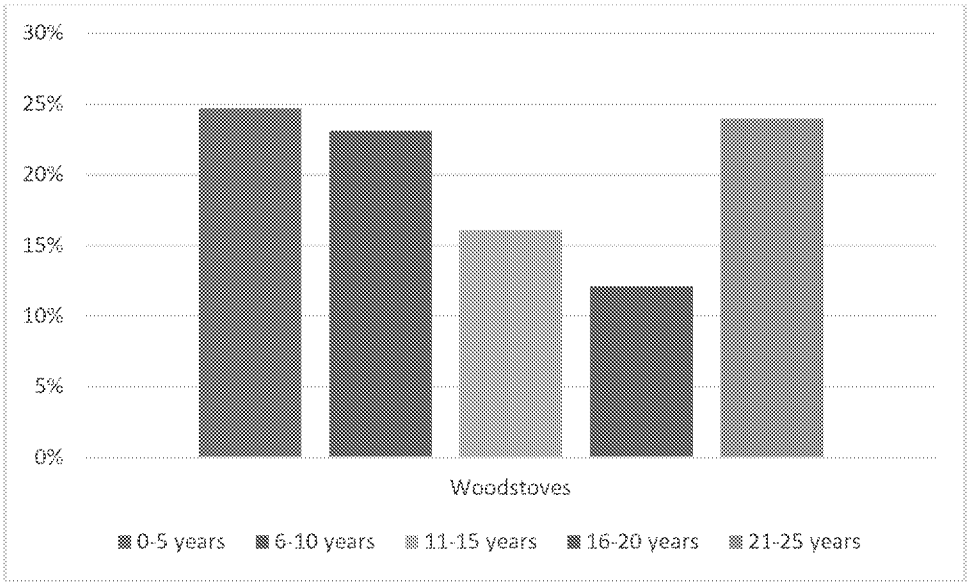
State and local agencies rely on EPA's federal certification program to ensure that new RWH models do not exceed the Step 2 limits in the RWH NSPS. Because there is no mechanism for follow-up assessment of performance in the field, it is essential that the procedures used to certify new wood burning devices accurately reflect emissions under normal use. This is crucial because, once installed, wood burning appliances typically remain in use for decades. A 2018 survey found that almost 25 percent of installed cordwood stoves were more than 20 years old (Figure 1).

In comments to EPA on the proposed 2015 rule, state agencies raised concerns about the third-party review system's efficacy and oversight.[7] In 2018, EPA released an Advanced Notice of Proposed Rulemaking (ANPRM) to solicit additional comments on improving the 2015 RWH NSPS program. Once again, states voiced concerns in comments on that

[7] NESCAUM Comments on Proposed Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters [79 Fed. Reg. 6330-6416 (February 3, 2014)], submitted May 5, 2014. Available at https://www.nescaum.org/documents/nescaum-comments-resid-wood-heaters-nsps-20140505.pdf.

ANPRM about the efficacy of the third-party review system and EPA's oversight of that program.[8]

Figure 1. 2018 National Survey - Reported Age of Woodstove[9]



In 2019, the Northeast States for Coordinated Air Use Management (NESCAUM) met with state agencies working on RWH programs. At that meeting, the states requested that NESCAUM undertake a review of certification test reports for appliances certified as meeting the 2015 RWH NSPS Step 2 emissions limits to assess the certification program's efficacy. That review employed procedures similar to those in a study conducted by Brookhaven National Laboratory for the New York State Energy Research and Development Authority (NYSERDA) in 2011 on EPA's Voluntary Hydronic Heater Program.[10] This report presents the results of the NESCAUM review and assesses the rigor of the current regulatory framework used to certify residential wood heating appliances. The report includes information on the following topics:

- the impact of residential wood heating,
- the regulatory structure of the federal RWH certification program,

[8] NESCAUM Comments on Advanced Notice of Proposed Rulemaking for New Source Performance Standards for Residential Wood Heaters, New Residential and Hydronic Heaters and Forced-Air Furnaces [83 Fed. Reg. 61585-61593 (November 30, 2018)], submitted February 12, 2019. Available at: https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0196-0017.

[9] Commission for Environmental Cooperation. *Residential Wood Use Survey to Improve Black Carbon Emissions Inventory Data for Small-Scale Biomass Combustion*, Final Report. CEC, Montreal, Canada (April 2019).

[10] Butcher, T, *Review of EPA Method 28 Outdoor Wood Hydronic Heater Test Results*, NYSERDA, Albany, NY (2011).

EPA-HQ-2021-5551

- an overview of test methods used by the certification program,
- the regulatory requirements for certification testing,
- the methodology used to assess program efficacy,
- the findings from the review process, and
- conclusions and recommendations.

2. BACKGROUND ON THE RESIDENTIAL WOOD HEATING SECTOR

2.1. Residential Wood Heating Emissions and Public Health Impacts

Cordwood, wood pellets, and wood chips are important primary and secondary residential heating fuels in the United States. According to the US Energy Information Agency (EIA), 1.8 million US homes use cordwood or wood pellets as their primary fuel. Another 10.3 million households use wood fuels for supplemental heating, which translates into 11 percent of all homes relying on wood as an energy source in 2015. Twenty-five percent of rural households use wood for heating compared with six percent of urban households.

While many view wood as a clean energy source, wood combustion is responsible for a disproportionately large share of pollutant emissions. According to EPA's National Emission Inventory, residential wood heating contributed approximately 340,000 tons of primary $PM_{2.5}$ in the United States in 2017.[11,12] After road dust and fires (wildfire and prescribed), residential wood heating was the largest source of primary $PM_{2.5}$ in the country, exceeding emissions from the highway and off-highway motor vehicle sectors combined (Figure 2).

Wood's importance as a fuel is regional in scale. Areas reliant on home heating oil with forested areas nearby tend to experience higher use.[13] Wood heating is highest in New England, where 21 percent of households use wood.[14] While wood heating may be regional, its impact has national significance. As highlighted in Figures 3 and 4, wood heating emissions were responsible for 98 percent of $PM_{2.5}$ emissions from the residential fuel combustion category. However, wood heating provided only 4 percent of the energy (in British thermal units) used for home heating.

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[11] US EPA. *2017 National Emission Inventory* (April 2020). Available at: https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data.

[12] Primary PM is emitted directly from the source, as distinguished from secondary PM, which is formed in the atmosphere by reactions of precursor air contaminants, such as oxides of sulfur (SOx), oxides of nitrogen (NOx), volatile organic compounds (VOCs), and ammonia (NH_3).

[14] EIA, 2020. *Winter Fuels Outlook*. Available at: https://www.eia.gov/outlooks/steo/report/winterfuels.php#:~:text=Wood,as%20a%20supplemental%20heating%20fuel.

Figure 2. Contributions by Source Category to National $PM_{2.5}$ Inventory (2017 NEI)[15]

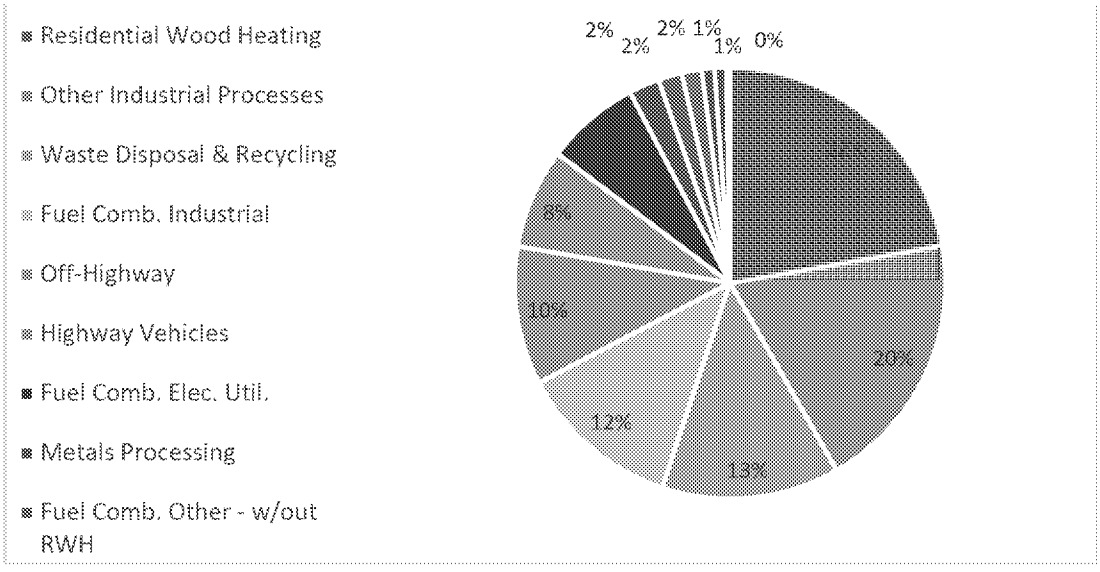
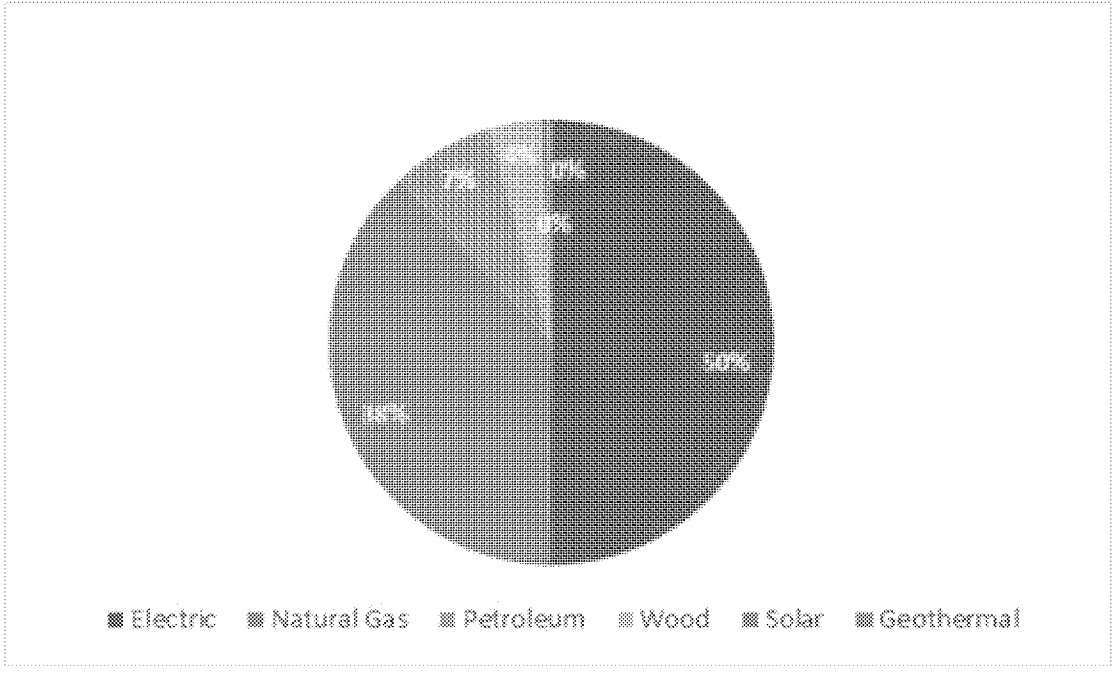
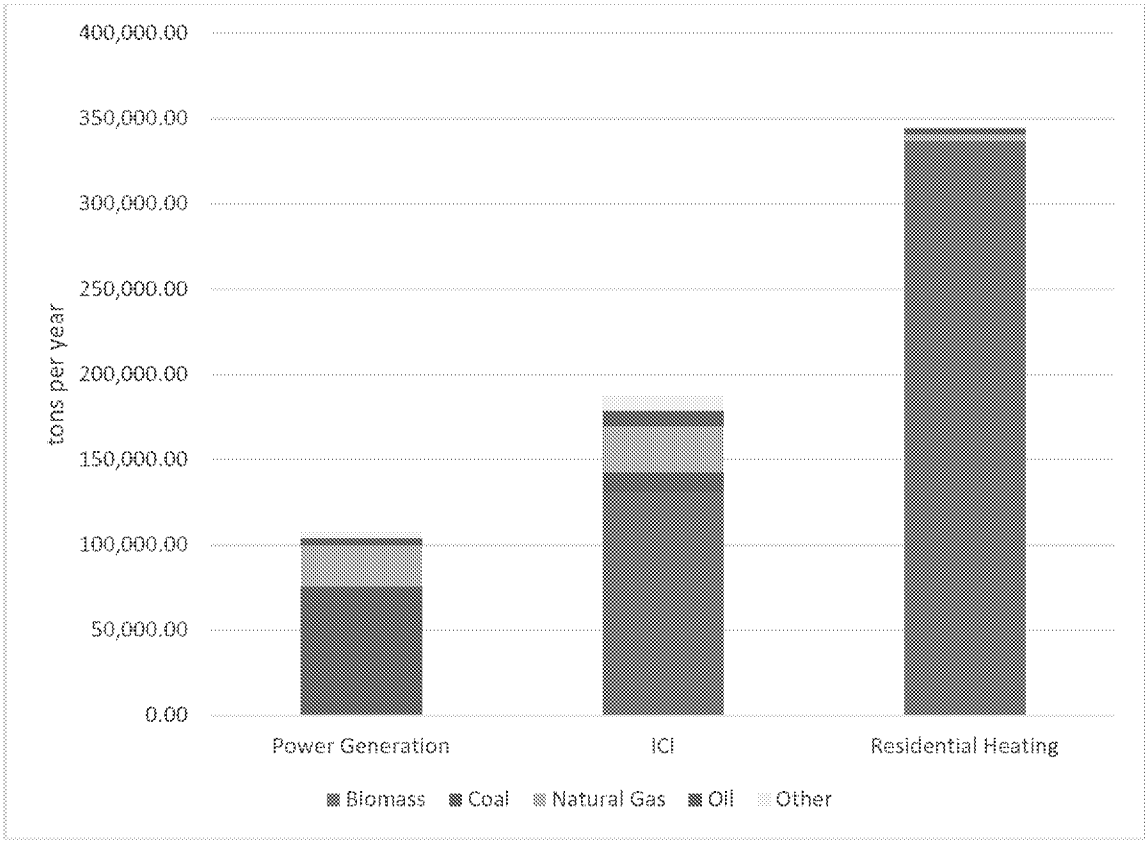


Figure 3. Energy Use for Residential Heating by Fuel Type (BTUs)



[15] US EPA. *2017 National Emission Inventory* (April 2020). Available at: https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data.

Figure 4. Fuel Combustion PM2.5 Emissions by Sector (tons per year)[16]



Exposure to $PM_{2.5}$ in wood smoke is associated with increased risk of respiratory and cardiac mortality, lung function decrements, exacerbation of lung disease, lung cancer, developmental and immunological effects, and premature mortality. A large percentage of the general population is particularly susceptible to those effects, including children, the elderly, and persons with respiratory or heart disease.[17] Studies estimate that RWH air pollutant emissions account for 10,000 – 40,000 premature deaths annually in the US.[18,19]

Wood combustion also emits polycyclic organic matter (POM), benzene, aldehydes, and other air toxics associated with respiratory and carcinogenic effects. EPA estimates that RWH accounts for 44 percent of POM emitted by all stationary and mobile sources and is

[16] ICI = Industrial, Commercial, and Institutional emission sources.
[17] Naeher LP, Brauer M, Lipsett M, Zelikoff JT, Simpson CD, Koenig JQ, Smith KR. Woodsmoke health effects: a review, *Inhal Toxicol* 19(1):67-106 (2007), doi:10.1080/08958370600985875.
[18] Penn SL, Arunachalam S, Woody M, Heiger-Bernays W, Tripodis Y, Levy JI. Estimating state-specific contributions to $PM_{2.5}$- and O_3-related health burden from residential combustion and electricity generating unit emissions in the United States, *Environ Health Perspect* 125:324–332 (2017), http://dx.doi.org/10.1289/EHP550.
[19] Ciaizzo F, Ashok A, Waitz IA, Yim SHL, Barrett SRH. Air pollution and early deaths in the United States. Part I: Quantifying the impact of major sectors in 2005, *Atmospheric Environment* 79:198-208 (2013), https://doi.org/10.1016/j.atmosenv.2013.05.081.

responsible for 25 percent of the cancer risk and 15 percent of the noncancer respiratory effects attributed to area source air toxics emissions.[20] In states where RWH is more prevalent, this emission source dominates health impacts from air pollution, especially during colder months.

Modeling and monitoring studies have demonstrated that wood smoke is a significant source of the PM measured in ambient air in many United States locations. Studies conducted by the Vermont Department of Environmental Conservation and NESCAUM found that, during the coldest and calmest winter days in Rutland, Vermont, wood smoke accounted for half or more of measured $PM_{2.5}$ levels.[21] A study in rural New York State found that more than 90 percent of carbonaceous $PM_{2.5}$ was associated with wood smoke and that winter nighttime peak $PM_{2.5}$ levels can exceed 100 $\mu g/m^3$.[22] These results are consistent with a field study by NESCAUM in the Adirondacks region that found significant localized pollution from wood burning that is closely associated with the higher population densities of towns and villages.[23] A 2016 study for New York State used modeling to assess wood heating impacts. Results from that study indicated that "a single polluting, wood-burning boiler or stove can lead to pollution levels above health-based air quality standards in the immediate vicinity of the source."[24] Wood smoke issues are not isolated to mountainous areas where valley temperature inversions exacerbate PM emission levels. Studies in Connecticut have found that, on cold winter days when ambient concentrations of $PM_{2.5}$ are elevated, observed wood smoke contributes more than 50 percent of hourly $PM_{2.5}$ concentrations.[25]

Modeling techniques have been used to evaluate the impact of RWH on air quality in locations that lack air quality monitoring data.[26] The results indicate that RWH can cause

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[20] US EPA. *National Air Toxics Assessment, 2011 NATA: Assessment Results* (2015). Available at http://www.epa.gov/national-air-toxics-assessment/2011-nata-assessment-results#nationwide.

[21] Allen GA, Babich P, Poirot R. *Evaluation of a New Approach for Real Time Assessment of Wood Smoke PM*, Paper #16. Presented at the Air & Waste Management Association Visibility Specialty Conference on Regional and Global Perspectives on Haze: Causes, Consequences and Controversies, Asheville, NC (October 25-29, 2004).

[22] Graham J, Johnson P. *Assessment of Carbonaceous PM2.5 for New York and the Region*. NYSERDA Report 08-01, Albany, NY (March 2008). Available at http://www.nescaum.org/documents/assessment-of-carbonaceous-pm-2-5-for- new-york-and-the-region/.

[23] Allen GA, Miller PJ, Rector LJ, Brauer M, Su JG. Characterization of Valley Winter Woodsmoke Concentrations in Northern NY Using Highly Time-Resolved Measurements, *Aerosol and Air Quality Research* 11:519–530 (2011), doi:10.4209/aaqr.2011.03.0031.

[24] Weiss L, *et al. New York State Wood Heat Report: An Energy, Environmental, and Market Assessment*. NYSERDA, Albany, NY (April 2016).

[25] Connecticut Dept. of Environmental Protection, Bureau of Air Management. *Evaluation of Wood Smoke Contribution to Particle Matter in Connecticut*. Hartford, CT (February 7, 2011). Available at http://www.ct.gov/deep/lib/deep/air/wood_stove_furnaces/ctdep_woodsmokefinalreport.pdf.

[26] Weiss L, *et al.*, *New York State Wood Heat Report: An Energy, Environmental, and Market Assessment*. NYSERDA, Albany, NY (2016).

high ambient $PM_{2.5}$ levels in some locations, even in states that do not have designated $PM_{2.5}$ non-attainment areas.

2.2. Uses of the EPA Certification Program

As discussed in this section, a number of programs rely on the RWH NSPS certification program to identify clean burning appliances needed to meet federal health standards for $PM_{2.5}$ or to address local air pollution concerns.

2.2.1. State and Local Regulations

State and local agencies have developed ordinances and regulations that rely on EPA certification to identify clean RWH devices. Examples of such state actions are provided at: https://www.epa.gov/burnwise/ordinances-and-regulations-wood-burning-appliances.

2.2.2. Tax Incentives and Rebates

Federal, state, and local governments use the EPA certification program as a basis for identifying RWH appliances that are eligible for tax incentives or rebates. These programs cannot achieve optimal emissions reductions if certified stoves do not perform well in the field. Recently, the federal government passed the Biomass Thermal Utilization Act (BTU Act), which gives a 26 percent federal tax credit to any residential wood heating system with an efficiency of 75 percent or more. IRS regulations for this program are not yet in place, but many believe that the EPA database should be the authority to determine which appliances can obtain that tax credit. The following state programs also provide tax incentives or rebates:

- Alabama – 100 percent tax deduction for RWH systems
- Arizona – $500 tax deduction
- Georgia – 100 percent tax deduction for RWH systems
- Idaho – 100 percent tax deduction applied over several years
- Maine – rebates of up to $6,000 for cordwood or pellet boilers
- Maryland – rebates of up to $500 for cordwood stoves and $700 for pellet stoves
- Montana – up to a $1,000 tax credit
- New Hampshire – rebates of 40 percent of the purchase cost ($10,000 cap) for automated wood-fired heating systems
- New York – rebates of $2,000 for pellet stoves and up to $23,000 for boilers
- Vermont – rebates of $6,000 for pellet boilers or furnaces, $650 for pellet stoves

2.2.3. Change-out Programs

Over the past decade, millions of taxpayer and enforcement settlement dollars have supported the purchase of new wood-burning appliances. These programs, which have taken place in many areas of the United States, seek to reduce RWH emissions by

replacing older wood-burning appliances with new ones that are NSPS-certified. In the western United States, change-out programs have been used to reduce PM emissions in non-attainment areas. EPA's Targeted Airshed grant program has also spent tens of millions of dollars to support change-outs in a subset of nonattainment areas having the worst levels of $PM_{2.5}$ pollution.

One of the most frequently touted change-out programs took place in Libby, Montana. During 2005 to 2008, every non-EPA-certified stove in that community was replaced. Replacing non-certified stoves with those that had been EPA-certified was expected to reduce this source category's impact by more than 75 percent. However, follow-up studies found that PM emissions from wood heating only declined by 28 percent.[27] Another study of this change-out program found that indoor PM emission reductions across homes and years were variable. A subset of households did not experience any reduction in PM following the change-out, while almost a quarter of the homes measured higher PM levels after than before the change-out.[28] This history indicates that without reliable certification procedures, replacing old stoves with newer models may not result in pollution reduction benefits.

2.3. EPA Certification Process

To obtain EPA certification of a new wood appliance model, the RWH NSPS requires completion of a valid certification test on a prototype of that model, conducted according to the specifications in the rule, that shows compliance with the applicable standard. Before performing the certification test, manufacturers must:

- Secure the services of an ISO-accredited/EPA-approved laboratory to conduct the test.
- Secure the services of an ISO-accredited/EPA-qualified third-party certifier to review the test report.
- Send a 30-day notification to EPA of the intent to test, using the form developed by EPA. The submission must identify the EPA-approved test laboratory, third-party certifier, test methods, model name, and test dates.

After an EPA-approved laboratory conducts the certification test, the test data must be submitted to EPA within 60 days. The manufacturer must then submit the draft test report to an ISO-accredited third-party reviewer for review. The third-party reviewer must

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[27] Ward T, Palmer C, Noonan C. Fine Particulate Matter Source Apportionment Following a Large Woodstove Changeout Program in Libby, Montana, *Journal of the Air & Waste Management Association* 60:688-693 (2010), doi:10.3155/1047-3289.60.6.688.

[28] Noonan C, *et al.* Residential indoor PM2.5 in wood stove home: follow-up of the Libby Changeout Program. *Indoor Air* 22:492-500 (2012), https://doi.org/10.1111/j.1600-0668.2012.00789.x.

review the test report and identify all issues that do not comply with RWH NSPS requirements. If the ISO-accredited third-party reviewer determines that the test was completed according to the RWH NSPS requirements and that the test report is complete, the reviewer issues a certificate of conformity.

Upon receipt of the certificate of conformity, the manufacturer can then submit an application package for certification to EPA's Office of Enforcement and Compliance Assurance (OECA). OECA reviews the submittal to determine that it is complete and accurate. A complete application package includes the following items:

- Certificate of conformity by an ISO/EPA-approved third-party certifier.
- Quality Assurance (QA) plan.
- Full emissions test report from an ISO-accredited/EPA-approved laboratory, including all documentation.
- Model name and design number.
- Engineering drawings and specifications of components that may affect emissions.
- Identification of confidential business information.
- Copy of warranties.
- Statements about stove construction materials; assurance program; sealing and storing the tested unit; manufacturing, labeling and owner's manuals; contracts with an EPA-approved laboratory and third-party certifier and approval to allow those entities to submit information on behalf of the manufacturer; posting of test report on manufacturer's web site; and acknowledgments that the certificate cannot be transferred and that it is unlawful to sell a unit without a valid certificate of compliance.
- Contact information for the manufacturer's responsible representative.
- A statement that the manufacturer has complied with and will continue to comply with all requirements pertaining to the certificate of compliance and that the manufacturer remains responsible for compliance regardless of any error by the EPA-approved test laboratory or third-party certifier.

OECA policy has targeted a timeframe of 90 days to review an application package. The 90-day timeline is a policy decision rather than a regulatory requirement. If, after review, OECA certifies the model line, the RWH NSPS requires the manufacturer to:

- Publicly post the complete non-CBI test report,
- Implement the QA plan via an ISO-accredited/EPA-approved third-party certifier, as detailed in the application, and
- Submit sales data per model, by state, every two years to OECA.

2.3.1. Third-Party Report Review

The requirement for third-party conformance certifications was first introduced in the 2015 RWH NSPS, and EPA must approve the third-party reviewers. The application process includes demonstrating that a nationally recognized accrediting entity has accredited the reviewer to perform certifications and inspections under ISO-IEC Standards 17025, 17065, and 17020.

According to the 2015 RWH NSPS, the third-party certifiers must "[h]ave no conflict of interest and receive no financial benefit from the outcome of certification testing." The company that conducts a certification test, however, is allowed to also provide third-party review services for that test. The role of the third-party reviewer includes:

- Witnessing the test (optional component).
- Reviewing the test report to determine that all requirements of the RWH NSPS related to RWH testing were completed appropriately.
- Issuing a certificate of conformity.
- Conducting compliance assurance inspections to ensure that production models match the prototype that was tested.
- Assessing whether the manufacturer's QA plan meets the requirements of the rule.

Pursuant to the 2015 RWH NSPS, EPA relies heavily on the third-party reviewer to complete comprehensive reviews of test reports. Review of the test report by the ISO-accredited third-party must include confirmation that the following RWH NSPS requirements were met:

- Emissions testing was conducted in accordance with all regulatory requirements.
- The test report is complete and accurate.
- Instrumentation used for testing was properly calibrated.
- Testing data provides sufficient information to confirm that the appliance meets the emission standards listed in the regulation.
- The manufacturer's QA plan is sufficient.

If all of the above conditions are met, the third-party reviewer can issue a certificate of conformity.

2.3.2. Third-Party Compliance Assurance Monitoring Programs

Another new component of the 2015 RWH NSPS is the use of third-party reviewers to conduct QA audits of manufacturing facilities. These inspections are part of the compliance assurance monitoring programs submitted by manufacturers to EPA in the

application package for certification. The third-party certifier conducts regular (at least annual) unannounced inspections of the manufacturing facility to ensure that the manufacturer's QA plan is being implemented. Upon completion of the inspection, the third-party inspector must submit inspection reports to the manufacturer and OECA. Inspection reports must identify any deviations from the plan and specify corrective actions.

2.3.3. Approved Laboratories

The 2015 RWH NSPS requires all laboratories conducting certification tests for any appliance regulated under the RWH NSPS to obtain ISO/IEC 17025 accreditation. ISO/IEC 17025 is a quality management program designed to ensure testing laboratories are following proper procedures. To obtain ISO/IEC 17025 accreditation, laboratories must enter into a contract with an ISO accrediting agency and prepare documentation outlining the procedures that the laboratory uses, specific activities the laboratory undertakes, QA plans, and records that provide evidence that QA plans are put into practice.

The ISO accreditor reviews and assesses the documentation supplied by the laboratory and provides a report detailing any corrective action needed. When all needed corrective actions have been completed, the accreditation documents are submitted to a review body for approval. If approved, the laboratory receives a certification of accreditation. Once the laboratory obtains this accreditation, it can apply to the EPA Administrator for approval to conduct testing under the RWH NSPS rule. As part of that application, laboratories must:

- Submit documentation of accreditation under ISO-IEC Standard 17025.
- Agree to participate biennially in an independently operated proficiency testing program with no direct ties to the participating laboratories.
- Agree to allow the Administrator, regulatory agencies, and third-party certifiers access to observe certification testing.
- Agree to comply with calibration, reporting, and recordkeeping requirements that affect approved testing laboratories.
- Agree to perform a compliance audit test (at the manufacturer's expense at the testing cost normally charged to such manufacturer) if the laboratory is selected by the Administrator to conduct the compliance audit test of the manufacturer's model line.
- Have no conflict of interest and receive no financial benefit related to the outcome of testing.

- Agree to not perform initial certification tests on any models manufactured by a manufacturer for which the laboratory has conducted research and development design services within the last five years.
- Agree to seal any wood heater on which it performed certification tests immediately upon completion or suspension of certification testing with a laboratory-specific seal.
- Agree to immediately notify the Administrator of any suspended tests (including the reason(s) why and the projected retest date) and submit the operation and test data obtained for the suspended tests.

EPA certifies laboratories for operation under the RWH NSPS regulation for a five year period. After five years, the laboratory must submit a request for renewal.

2.4. EPA Certification Test Methods

The 2015 RWH NSPS specifies test methods to be used for certifying an appliance's compliance with that regulation. Those methods can be segregated into those that specify pollutant measurement procedures and those that address operation and fueling protocols.

2.4.1. Emission Measurement Methods

EPA references two test methods in the 2015 RWH NSPS for emission measurements:

- ASTM 2515-11 to measure particulate matter emissions.
- Canadian Standards Administration (CSA) B415.10-10 for efficiency, heat output, and carbon monoxide measurement.

2.4.2. Operation and Fueling Protocol for Stoves

EPA's operation and fueling protocols are specific to the type of stove being tested. Cordwood stoves may be tested using either EPA Method 28R, which uses dimensional lumber, or ASTM 3053-17, which uses cordwood. Both methods consist of individual runs that are conducted under steady-state conditions with no replicate testing. Pellet stoves use ASTM 2779-10, which is a single integrated test run. Table 1 summarizes those methods for certifying stoves.

Table 1. Comparison of Key Characteristics of EPA and ASTM Test Methods

Element	EPA M28	ASTM 3053-17	ASTM 2779
Appliance type	Variable & single burn rate stoves	Variable & single burn rate stoves	Pellet stoves
Summary	Four steady state runs at defined load categories	Two steady state load categories (low and medium) and one run with start-up, reload to high fire	One integrated run that encompasses four different fuel loads, coal bed conditions, and heat loads
Operational Parameters			
Number of loading events	1	1 in low and medium runs, 2 in start-up/high run	0
Start-up	No	Yes, combined with high fire	No
High fire	Yes	Yes, combined with start-up	Yes
Medium fire	Two burn rates assessed	Requires a burn setting higher than low but no other requirements	Yes, defined as 50% or less of high fire
Low fire	Yes	Yes	Yes
Replicates	None	None	None
Long charcoal tails	Yes	Yes	No
Precision and variability data	No	No	No
Fueling Parameters			
# of different load sizes by weight	1	2	NA
Fuel load volumes	7 lb/ft^3	10 lb/ft^3 for high; 12 lb/ft^3 for low and medium fire runs	NA
Fuel requirements	Dimensional Douglas fir at a specified moisture content	Any fuel species within allowed specific gravity range at a specified moisture content	No specifications

2.4.3. Operation and Fueling Protocol for Central Heaters

EPA requires the ASTM 2618 operation and fueling protocol in certification tests for cordwood hydronic heaters that do not have external thermal storage. Cordwood hydronic heaters with thermal storage can choose among three different test methods: (1) EPA Method 28WHH, (2) ASTM 2618-13, or (3) EPA Method 28WHH-PTS (for units with partial thermal storage). Pellet boilers without thermal storage must use ASTM 2618-13. Pellet boilers with external thermal storage must use an approved Alternative Test Method (ATM). Furnaces use CSA B415.1-10. Table 2 summarizes key elements of the central heating test methods.

Table 2. Comparison of Test Methods for Hydronic Heaters

	ASTM E2618-13	CSA B415.1-10	EPA M28WHH-PTS
Manual Loaded Fuel: Crib, Cord, or Both	Crib, Cordwood, or Pellet	Crib and Cordwood	Cordwood
Fuel Feed	Both	Both	Manual
PM Measurement Method	Dilution tunnel	Dilution tunnel	Dilution tunnel
PM Measurement	Total PM	Total PM	Total PM
PM Emission Metric	Weighted average or individual run, lb/MMBtu output	Simple average of test runs, lb/MMBtu output	Simple average, lb/MMBtu output
Wood Fuel Species	Any within specified density range	Any within specified density range	white or red oak
Moisture Range (dry basis)	19-25%	18-28%	19-25%
Method of Efficiency Determination	Thermal output	Stack loss method	Thermal output
Burn Rate Categories	Maximum output 25-50% 15-24% < 15%		Maximum output 25-50% 15-24% < 15%
PM Emission Rate (g/hr)	Yes – run average	No	Yes – by phase of burn cycle
Measures Start-up	No	No	Yes
Thermal Storage	Annex that applies to cordwood appliances only	No	Partial
Cold Start	Yes, if used with storage	No	Yes – Cat I and II
Upper Size Limit	No	500,000 Btu/hr	350,000 Btu/hr
Fuel Loading for Handfed Units (minimum)	10 lb/ft^3	10 lb/ft^3	10 lb/ft^3

2.4.4. Alternative Test Methods

Manufacturers can request approval from EPA to use an alternative test method (ATM). ATMs are most often requested if there is no designated test method in the rule that is applicable to the appliance that will be tested. Pellet boilers using thermal storage are an example of an appliance category that requires an ATM.

3. METHODOLOGY

3.1. Study Approach

The project team used an approach similar to that used in a 2011 assessment of EPA's voluntary program for outdoor wood boilers[29] to assess the efficacy of the 2015 RWH NSPS certification program. The study reviewed available certification test reports for appliances certified as compliant with the Step 2 emission standards, evaluating: (1) completeness of the EPA-certified test reports, (2) conformance with test methods, and (3) error magnitudes (where sufficient information was available to estimate this parameter). The review, which is considered to be at the "screening" level, is intended to identify appliance models that have significant certification procedure issues, provide that information to EPA for a more detailed review, and present recommendations for improvements in the certification process.

The first step in the process was to identify the requirements that would constitute a complete certification application package according to the applicable regulations and guidance. This provided the criteria for determining report completeness. A regulatory basis document that compiles the identified review elements and the applicable regulatory citations is on the website https://dec.alaska.gov/air/burnwise/manufacturers-vendors/ maintained by the Alaska Department of Environmental Conservation (ADEC).

Once the team finalized the list of review criteria, an Excel-based tool was created to input test report data and related elements in a standardized format. Because the original Excel spreadsheet was large and complex, Excel summary sheets were created to streamline the review process. The summary sheets, which were used for the reviewers' assessments, pulled information from the original spreadsheet with the previously entered reports. To assess the review tool performance, three people reviewed the same report independently. A comparison of the three different reviews found that all three reviewers identified the same flags. All three reports obtained the same preliminary review determination. One reviewer spent additional time checking calculations in the underlying data. The reviewer who completed those calculations found additional issues. However, it was determined there were not sufficient resources to conduct an in-depth review of each report. Based on this effort's findings, the team agreed that the tool was sufficient to allow multiple people to complete test report reviews. A sample of the summary review sheet is provided in Figure 5.

[29] Butcher, T, *Review of EPA Method 28 Outdoor Wood Hydronic Heater Test Results*, NYSERDA, Albany, NY (2011).

Figure 5. Example of the Review Template for Cordwood Stoves

Cordwood Summary Sheet Template

Summary of Review								
Manufacturer								
Model				Control approach				Non-Catalytic
Prelim review recomen.								
Red flags		Orange flags		Yellow flags				
Final Determination								Basis:
Testing Information	***Determination***							***Notes***
Test method								
Test Lab								
Third-party certifier								
Report certified								
Test Report Elements	***Determination***							***Notes***
Wght Avg PM emissions (g/			PM Highest 1-hr (g/hr)					
Wght Avg HHV Efficiency (%								
Wght Avg CO (g/hr)			Wght Avg CO (g/min)					
Max heat output (Btu/hr)								
Manufacturers instructions								
Firebox vol. test report								
Firebox dimensions			Longest dim. (in)					
Firebox calculations								
Efficiency calculations								
Burn rate calculations								
Raw data sheets								
Pre-burn completed by								
Pre-burn data								
Lab technician notes								
Doc. of run appropriateness								
Doc. of run validity								
Doc. of run anomalies								
Doc. of run burn rates								
Photos of the fuel loaded								
Test Run Data	***Determination***							***Notes***
Run #								
Run Category								
Burn rate (kg/hr)								
PM emissions by run (g/hr)								
PM 1-hr filter pull (g/hr)								
Filter data								
Train precision (%)								
Negative weights								
Negs handled appropriately								
Heat output by run (Btu/hr)								
CO by run (g/hr)								
HHV efficiency (%)								
Lowest burn rate tested								
All run data								
Appliance Fueling	***Determination***							***Notes***
Fuel species				Maple				

Log length (in)								
Direction of longest dimens								
Log direction for testing								
Squared (ASTM test only)								
Debarked (ASTM test only)								
Load density (lb/ft3)								
Fuel moisture content load (%db)								
Fuel piece configuration								
Owners Manual Req.	**Determination**							**Notes**
Stack height								
Location recommendation								
Guidance on proper draft								
Fuel loading & reloading								
Fuel selection recomm.								
Improper fuels warnings								
Fire starting procedures								
Proper use of air controls								
Proper operation low								
Ash removal procedures								
Replacement parts								
Federal warning (C or NC)								
Warranty rights								
Catalytic operation								
Cat maintenance procedure								
Determining catalyst det. o								
Reporting	**Determination**							**Notes**
Summary tables complete								
All run data submitted								
Test report complete								
Owner manual complete								
Test dates								
30 Day notice submitted to								
Tested on the proposed dat								
Tested in consecutive days								
60 Day report to EPA								

After completing the review tool, reviewers used EPA's wood heater database (https://cfpub.epa.gov/oarweb/woodstove/index.cfm?fuseaction=app.about) to identify wood burning devices that had been certified as Step 2 compliant. The study identified 255 appliances certified as Step 2 – 131 cordwood stoves, 96 pellet stoves, and 28 central heaters.

The 2015 RWH NSPS rule requires manufacturers to post complete test reports publicly on their company website. The team attempted to locate the test reports for all Step 2 certifications and post them to a central repository but encountered difficulties in obtaining test reports for approximately 20 percent of the appliances. Some websites had links to incorrect test reports. In other instances, the test reports could not be found after exhaustive online searches and a detailed review of the manufacturer's website. In some cases, test reports were located by requesting assistance from OECA.

Individual reviewers examined the test reports and entered data either into the initial spreadsheet or directly into the review tool. The reviewer was also able to enter notes,

comments, and recommendations. Reviews were initially entered into the large spreadsheet, and summary report sheets were exported from the review tool. Both the review tool and summary reports automatically generated warning flags, which provide an objective identification of significant problems with the testing or reporting.

A committee, comprised of staff from multiple state and local air quality agencies, met weekly to review summary data. During review meetings, the reviewer presented the findings for each summary sheet, and the committee discussed the results. After reviewing the findings, the committee made a final determination about issues in each report. In some cases, summaries underwent additional review or revisions based on EPA feedback.

In September 2020, manufacturers of room heating appliances were notified that summary sheets had been completed for their certification test reports. The manufacturers were given the opportunity to request a review of the sheets before ADEC publicly posted the information. The initial posting occurred in November 2020, and an update occurred in February 2021. Manufacturers were allowed to address deficiencies identified by reviewers by providing new information to ADEC or by highlighting where the information existed in the report. Manufacturer review only slightly modified review findings. After manufacturers reviewed existing or submitted new data, less than 10 percent of the deficiencies could be resolved.

ADEC maintains a copy of the original review sheet and the updated version. Summary sheets for cordwood stoves and pellet stoves can be found on the ADEC website https://dec.alaska.gov/air/burnwise/manufacturers-vendors/. The information in this report was current as of February 2021. ADEC plans to update the summary sheets as it compiles new appliance reviews and as manufacturers submit revised and additional information. Central heating appliances were not included as part of ADEC's initial regulatory efforts. However, summary sheets and reviews were also completed for these appliances in this study.

3.2. Review Elements

Given the large number of test reports, the team conducted a focused screening-level review. The first step was to determine the completeness of the reports. The second step was to determine the need for follow-up action. Defect and deficiency flags generated by the review were segregated into three categories: (1) required reporting to assess report completeness, (2) revocation elements, and (3) questionable practices that should trigger compliance audits. These review elements were based on the specifications in the RWH NSPS rule and the test methods that the rule references. The regulatory basis for each element is detailed in a report posted by ADEC called "ADEC Regulatory Basis," which can be accessed from the ADEC webpage link given in the above paragraph. Results of

appliance reviews can be found in the following Sections 4.1 through 4.3. Reviewers also assessed overarching rule reporting and compliance monitoring components. The results of this effort can be found in Section 4.4.

Based on the identified deficiencies, the study divided test reports into three categories: (1) findings to be submitted to OECA with a request it take action under the revocation of certification provisions in the RWH NSPS [40 CFR § 60.533(l)/60.5475(l)], (2) findings to be submitted to OECA with a request it take action under the audit provisions in 40 CFR § 60.533(n)/60.5475(n), and (3) no action. The following sections detail the review elements that determined categorizing for EPA action or no action.

3.2.1. Report Completeness

Reviewers evaluated reports to determine whether they included the elements required in the RWH NSPS for a complete test report. The required elements, as identified in 40 CFR § 60.537/60.5479, are as follows:

- Full test report
- Raw data sheets
- Laboratory technician notes
- Calculations
- Test results for all test runs
- Discussions of the appropriateness and validity of all test runs, including runs attempted but not completed
- Detailed discussion of:
    - all anomalies
    - whether all burn rate categories were properly achieved
    - any data not used in the calculations
    - for any test runs not completed, the data that were collected, and the reason that the test run was not completed
    - documentation that the burn rate for the low burn rate category was no greater than the rate that an operator can achieve in-home use and no greater than is advertised by the manufacturer or retailer.

Reports that contained all the elements listed above were deemed complete. Reports with two or fewer items flagged as missing were determined to be incomplete-minor. Reports flagged for three or more elements were deemed incomplete – major. If no test report could be found for the appliance, the appliance name was sent to OECA.

3.2.2. Recommendation for Action – 40 CFR § 60.533/60.5475(l)

The elements identified in 40 CFR § 60.533(l)/60.5475(l) were reviewed to identify appliances that should be recommended for revocation procedures. The regulatory language states that a revocation determination "will be based on all available evidence, including but not limited to" the specific elements listed in that section. Note that the RWH NSPS does not require a compliance audit to trigger revocation action. Instead, revocation is based on the documentation submitted to EPA. The following elements are listed in those sections as evidence that EPA should consider when making revocation decisions:

- § 60.533/5475(l)(ii) A finding that the certification test was not valid, based on problems or irregularities with the certification test or its documentation. A flag for this criterion was triggered by anomalies or irregularities in the test results. For example, reporting negative emission rates or reporting theoretically impossible efficiency results would trigger a flag under this criterion.

- § 60.533/5475(l)(iii) A finding that the labeling of the wood heater line, the owner's manual, or the associated marketing information does not comply with the requirements of § 60.536/60.5478, which specify that each affected wood heater offered for sale by a commercial owner must be accompanied by an owner's manual that includes the information listed in that section pertaining to installation and to operation and maintenance. That information "must be adequate to enable consumers to achieve optimal emissions performance" and "consistent with the operating instructions provided by the manufacturer to the approved test laboratory for operating the wood heater during certification testing, except for details of the certification test that would not be relevant to the user." Examples of flags generated under these criteria include reports that list firebox volumes, fuel requirements, or heat outputs that differ from those used in the certification test.

- § 60.533/5475(l)(iv) Failure by the manufacturer to comply with reporting and recordkeeping requirements of § 60.5479. An example of flags generated under this reporting criterion would be (1) failure to conduct testing at a burn rate no lower than the homeowner can achieve during in-home use and no greater than advertised by the manufacturer or retailer, (2) failure to measure or report carbon monoxide, (3) failure to measure or report efficiency, or (4) failure to measure or report 1-hour filter values as required under sections § 60.534 or § 60.476.

- § 60.533/5475(l)(vii) Failure of the approved laboratory to test the wood heater according to the specified methods. Examples of flags generated under this

criterion include failure to follow procedures specified in the test methods, such as conditioning requirements, burn rate criteria, or train precision, and failure to provide required calculations.

3.3. Recommendation for Action – 40 CFR § 60.533(n)/60.5475(n)

40 CFR § 60.533(n) and § 60.5475(n) provide EPA with the authority to conduct audit tests or to direct the manufacturer to have an audit test performed by an approved laboratory selected by EPA at the expense of the manufacturer. Reviews that did not flag revocation elements but instead identified deficiencies potentially affecting appliance performance or indicated the use of procedures allowed by the test methods but raised questions about test appropriateness were recommended to EPA for action under the audit provisions in 40 CFR § 60.533(n) or § 60.5475(n). These elements may not be directly addressed by test methods or rule requirements but could affect in-use emissions performance.

3.4. Recommendation for No Action

Certification test reports that were determined to be complete and that followed the test method and rule requirements obtained "no action" recommendations.

4. REVIEW FINDINGS

The review team assessed certification test reports for 242 out of 255 room and central heaters approved by EPA as Step 2 compliant. Test reports could not be found for 13 devices. The reports were grouped for analysis by appliance type (room heaters or central heaters), and the room heaters were further divided into two subcategories – cordwood and pellet stoves. This section presents the analysis findings.

4.1. Cordwood Stoves

The team identified 131 cordwood stoves for review, but could not find test reports for two of the stoves. Three PM emissions control approaches are typically employed in cordwood stoves: (1) catalytic controls, (2) non-catalytic controls using secondary combustion to reduce emissions, and (3) a combination of secondary combustion and catalytic controls, typically referred to as the hybrid approach. Eighty-five of the appliances reviewed had non-catalytic controls, thirty-one had catalytic controls, and thirteen used a hybrid approach.

Cordwood stove certification tests can be conducted using either of two test methods: (1) M28R, which is conducted on dimensional lumber fuel, or (2) ASTM 3053-17, which uses cordwood fuel. Sixty of the appliances evaluated used M28R for certification testing, and sixty-nine used ASTM 3053-17. The control approach and test method for two appliances could not be assessed because reviewers could not find their certification test reports on the manufacturers' websites.

4.1.1. Complete Test Reports

The RWH NSPS requires manufacturers to submit "[a]ll documentation pertaining to a valid certification test, including the complete test report and, for all test runs: Raw data sheets, laboratory technician notes, calculations, and test results" as part of the application for a certificate of compliance with that standard [40 CFR § 60.533(b)(5)]. Within 30 days of receiving certification, "the manufacturer must make the full non-CBI test report and the summary of the test report available to the public on the manufacturer's Web site" [40 CFR § 60.537(g)].

For cordwood stoves, the reviewers identified 131 devices certified as Step 2 and were able to obtain test reports for 129 of them. The reviewers assessed report completeness by identifying the number of non-reported elements on the summary sheets. The summary sheets listed 36 reporting elements. Report completeness was based on the number of missing elements. Table 3 provides the findings for some of the critical reporting elements. Based on its assessment, each report was assigned to one of the following five categories:

- *Complete:* All non-CBI elements were included in the report.
- *Incomplete-Minor:* One to three elements (less than 10 percent) were missing from the test report.
- *Incomplete-Major:* Four to ten (10 – 30 percent) elements were missing from the test report.
- *Incomplete-Seriously Deficient:* More than ten elements (>30 percent of the test reports) were missing from the test report.
- *Missing:* Test report could not be obtained by searching the manufacturer's website and by conducting additional web searches.

Table 3. Assessment of Report Completeness – Cordwood Stoves

Report Element		Reported	Not Reported
Raw data sheets	Data for all test runs	52	79
	Manu. instructions	65	66
	Firebox data	56	75
	Required photos	93	38
	Fuel loading	102	29
	Fuel characteristics[30]	100	31
	Fuel loading density	102	29
	Fuel moisture	107	24
	Filter data	99	32
Calculations	Firebox	32	99
	Efficiency	114	17
	Train precision	68	63
Lab technician notes		98	33
Appliance settings		73	58
Heat output		128	3
Burn rate categories		122	9
Discussion of unused data		74	57
Conditioning		85	46
Test location		125	6
Third-party certifier		113	18
Third-party report		85	46

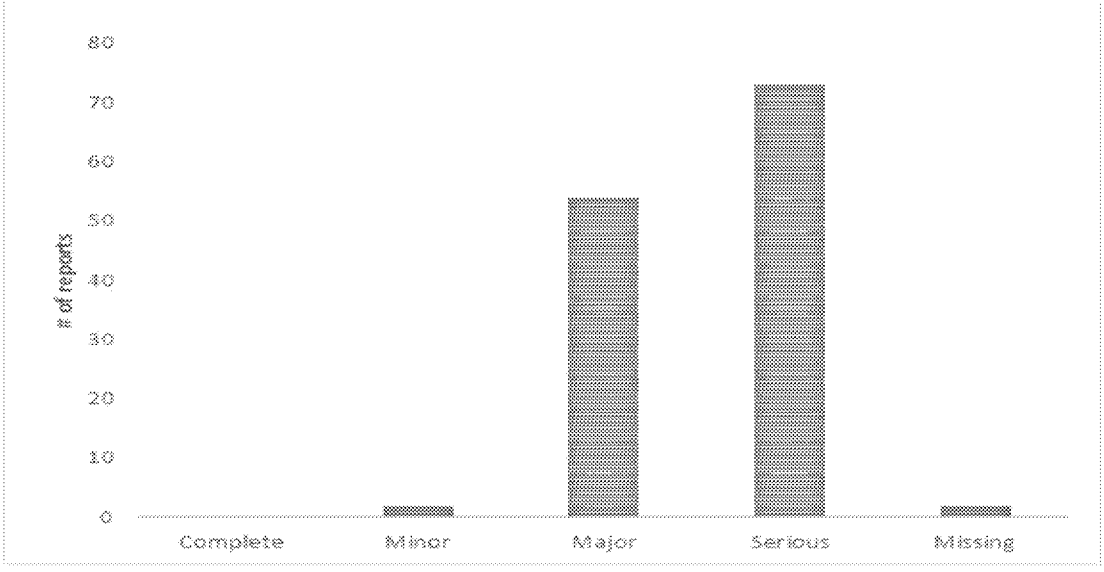
According to the above criteria, none of the 131 identified Step 2 cordwood stoves had complete reports (Figure 6). Two reports had minor deficiencies, 54 reports had major

[30] This element addresses fuel length and for ASTM 3053, the fuel piece characteristics.

deficiencies, and 73 reports had serious deficiencies. Two reports could not be found and were flagged as subject to revocation criteria for lack of public availability.

Of the 129 obtained cordwood stove reports, 13 consisted of only a few pages with little to no information, 21 reports did not include raw datasheets, and 31 reports failed to include laboratory technician notes from the testing.

Figure 6. Cordwood Stove Certification Test Report Completeness



Additional material may have been submitted to EPA OECA as part of the certification application package, but that information was not available to the reviewers. If this additional material was submitted, it illustrates that without access to those elements, states and other parties that rely on EPA's certification process cannot conduct a full review of test results.

We note that during this study, reviewers downloaded different versions of the same test for some appliances, raising concerns about version control and EPA oversight of the data. EPA could resolve this issue by posting the non-CBI reports and all supporting data received as part of certification application packages in a centralized database using its online tools, like the EPA ECHO (Enforcement and Compliance History Online) database. This step would improve access to the complete reports and increase confidence that the reports posted online are the reports EPA reviewed.

4.1.2. Revocation Criteria – Testing Irregularities – Mandatory Reporting Elements

The 2015 RWH NSPS states that a certification can be revoked if EPA finds that the certification test was not valid "based on problems or irregularities with the certification

test or its documentation" [40 CFR § 60.533(l)(ii)]. In this study, evaluating testing irregularities included a review of the handling of negative filter weights, as described in this subsection.

Negative Filter Values

ASTM 2515 uses gravimetric analysis to determine PM measurements. Negative filter weights occur when the filter weight after testing is less than the filter weight measured prior to conducting the test. ASTM 3053-17 does not specify how EPA-approved laboratories should handle negative filter values, either in recovery procedures or in calculations. NESCAUM contacted EPA to determine whether guidance had been provided to EPA-approved laboratories regarding proper procedures for addressing negative values. EPA reported that no guidelines had been requested or provided. Because EPA could not provide guidance on this issue, reviewers turned to test methods from the Oregon Department of Environmental Quality (OR DEQ). ASTM 2515, the PM measurement method, is a derivative of EPA Method 5G, which is itself derived from an OR DEQ measurement method. The original OR DEQ method required acetone rinses of the testing train to ensure all particulate materials had been captured. The OR DEQ method clearly articulates that "[t]he blank corrections for the filter and/or rinse samples are '0', if the blank filter or rinse samples yield negative weight gains."[31]

If negative filter weight values were reported, reviewers assessed whether the EPA-approved labs used acetone rinses or other activities to ensure all particulate matter had been recovered. The summary sheet tracked if test reports included negative filter weights. A separate cell tabulated if the negative values were handled appropriately.

Reports were classified as handling negative values appropriately if they indicated that the tester used procedures like acetone rinses to ensure capture of all materials. Reports that assumed negative values were captured elsewhere without identifying any recovery procedures were deemed "handled inappropriately."

Reviewers found that for the 129 located test reports:

- 25 percent (32) of test reports did not provide filter weight information,
- 45 percent (58) reported negative filter weights, and
- 32 percent (41) reported no negative filter weights.

Of the 58 reports with negative filter weights:

[31] Oregon Department of Environmental Quality, *Source Sampling Manual*, Volume 1, revised November 2018, p. C-8.14.

- 9 reports appeared to use recovery methods to assure all materials were included in the filter measurement data.
- 49 reports appear to assume, without confirmation, that the PM filter mass lost was captured elsewhere.

Reports that had negative values and did not report the use of recovery procedures were flagged for revocation criteria. Given the large number of reports with negative values, the lack of EPA guidance on proper procedures for handling negative values is a significant omission in the RWH NSPS program.

4.1.3. Revocation Criteria – Compliance with § 60.536 Requirements

Another revocation criterion specified in the 2015 RWH NSPS is a finding that "the labeling of the wood heater model line, the owner's manual or the associated marketing material does not comply with the requirements detailed in 40 CFR 60.536" [40 CFR § 60.533(l)(ii)]. 40 CFR § 60.536(g)(1) states that information in the owner's manual and associated material "must be consistent with the operating instructions provided by the manufacturer to the approved test laboratory for operating the wood heater during certification testing, except details that would not be relevant to the user." To assess conformance with these requirements, reviewers compared public information published by the manufacturer with the test report information on appliance parameters (firebox volume, heat output, and efficiency ratings) and the manufacturer instructions to the EPA-approved laboratory. The public information reviewed included owner's manuals, product brochures, and websites because "associated marketing materials" are included in this requirement.

Appliance Parameters – Firebox Volume

Firebox volumes are a foundational metric for conducting certification testing. The firebox volume determines the amount of fuel and the log length used for certification testing. Discrepancies in the firebox volume and its required fuel parameters will influence measured PM emissions during testing. Reviewers compared the firebox volume used for certification testing with the firebox volume in manufacturers' marketing materials, including the owner's manual, websites, and product brochures. Of the 129 cordwood stove test reports reviewed:

- 46 percent (59) reported a different firebox volume in marketing materials than the volume reported in the certification test report. 71 percent (42 of the 59) reported differences greater than five percent;
- 11 percent (14) did not list the firebox dimensions in marketing materials or did not report firebox volume in the test report; and
- 43 percent (56) had firebox volumes that matched.

The reviewers categorized the extent of the deviation in firebox volume for appliances with firebox volumes that did not match. Units with variations less than 5 percent were flagged for audit criteria. Appliances with a deviation greater than 5 percent were flagged under revocation criteria.

Appliance Parameters – Heat Output

Heat output is an important metric because the test methods require testing at maximum heat output. When the maximum heat output reported in the manufacturer's materials is greater than the maximum output reported during testing, the certification test may not be adequate or representative. The comparison of the maximum heat output in the certification test report with that listed in the manufacturer's materials found that:

- 75 percent (96) of the appliances reported higher heat output values in the marketing materials than the output reported in the certification testing report,
- 3 percent (4) did not report maximum heat output ratings in the marketing materials, and
- 22 percent (29) had maximum heat output data in the marketing materials that matched the test report.

Appliances were flagged for revocation criteria if the heat output ratings in the manufacturer's materials deviated by more than 10 percent from the heat output achieved during certification testing.

Appliance Parameters – Efficiency

The comparison of efficiency data reported in marketing materials and in certification test reports found that 28 percent (36) of the appliances had conflicting data, 7 percent (9) did not report efficiency information in their marketing materials, and 65 percent (84) had data that matched. Appliances were flagged for revocation criteria if the efficiency ratings in the marketing materials deviated from the average efficiency ratings given in the test reports.

Manufacturer's Instructions to Testing Laboratories

The 2015 RWH NSPS requires the manufacturer's instructions used for certification testing not contradict the operational instructions found in the owner's manual. Specifically, 40 CFR § 60.536(g)(1) states that the information in the owner's manual "must be consistent with the operating instructions provided by the manufacturer to the approved test laboratory for operating the wood heater during certification testing, except details that would not be relevant to the user."

Reviewers compared the manufacturer's instructions to the EPA-approved testing laboratories and the information in the owner's manual for air setting and fuel loading, which are two parameters identified in § 60.536(g). Of the 129 test reports reviewed, 64 test reports (51 percent) did not contain the manufacturer's instructions to the testing laboratory. Reviews assessed fuel loading procedures and air setting data in the 65 reports that had instructions. Areas not considered contradictory instructions were where manufacturers gave specific instructions, such as fuel placement, piece size, and spacing, to the lab but did not include those directions in the owner's manual. Contradictions were identified as lab instructions clearly deviating from instructions in owner's manuals. Issues such as bypass operation and air settings were identified as contradictions. The review found that 39 percent (25) of the test report instructions contradicted the owner's manual instructions. Significantly more reports would be flagged for this criteria if EPA determined that all directions given to the lab by the manufacturer must be included in the owner's manual as instructions.

Assessing the Impact of Contradictory Instructions

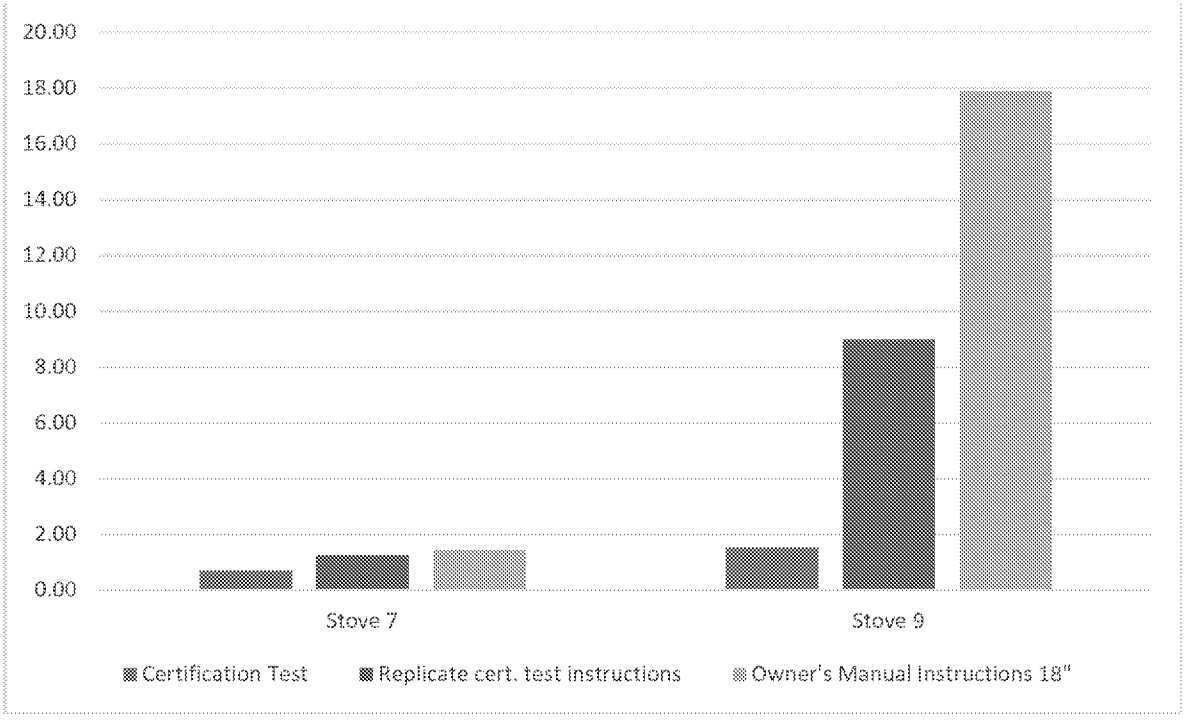
NESCAUM tested two medium-sized Step 2 certified stoves to assess the effect of contradictory manufacturer's instructions on emissions measurements (labelled here as "Stove 7" and "Stove 9"). Each stove was tested in two ways: (1) according to the test method used in the certification test and the instructions provided to the certification laboratory, and (2) using the ASTM3053-17 cordwood test and the instructions in the owner's manual. Stove 7 had hybrid (non-catalytic and catalytic) emissions controls and was certified using M28R as emitting less than 1 gram of PM per hour (g/hr). Stove 9 had non-catalytic emission controls and was certified using ASTM 3053-17 at 1.6 g/hr. Figure 7 shows the difference in fuel loading configuration in the two Stove 9 tests.

Figure 7. Fuel Loading Configuration – Stove 9

For each of the two stoves, the emission rates reported in the certification test report were compared to those measured in the NESCAUM study test that replicated the certification testing instructions and with the test performed using the instructions in the owner's manual. Those comparisons are shown in Figure 8. For Stove 7, the difference between the certification value and the replicate test, both of which were conducted with the M28R procedures, was less than 0.5 g/hr. Testing Stove 7 with the ASTM 3053-17 cordwood test according to the owner's manual instructions increased emissions by 100 percent from the certified value and 13 percent from the study test that replicated the certification testing procedures for that stove.

Stove 9 showed far more variability, although in that stove, ASTM 3053-17 was used for all tests. In Stove 9, the emission rate in the study test that replicated certification procedures was almost 500 percent of that in the certification test, an increase of more than 6 g/hr. The emission rate in the test performed according to the owner's manual instructions was more than 1,000 percent of the certification value, an increase of 16 g/hr. Results from this analysis indicate the need for consistency in operating instructions. It also highlights the need for EPA to conduct compliance audits to identify stoves, like Stove 9, for which certification results cannot be consistently reproduced.

Figure 8. Comparison of Emissions Rates (g/hr) in Tests on Two (2) Step 2 Certified Stoves



4.1.4. Revocation Criteria – Failure to Follow Test Methods

Failure to follow the test methods specified in 40 CFR § 60.534 is a criterion for revocation under 40 CFR § 60.533(l)(vii). Several elements were evaluated to determine whether certification tests were performed according to the specified methods.

Reporting Elements

Reviewers examined the test reports to determine whether they included the PM emissions in the first hour of the test [40 CFR § 60.534(d)], as well as the efficiency, heat output, and carbon monoxide emissions per CSA B415.1-10 [40 CFR § 60.534(e)] as required in the test methods.

One Hour PM Emission Rates

The RWH NSPS requires reporting the first hour of PM emissions for each test run. The test methods for space heaters require emissions data to be reported in grams per hour and grams per kilogram. Reviewers identified four issues associated with the first-hour reporting requirement: (1) failure to report any first-hour data, (2) failure to report first-hour data for some of the test runs, (3) failure to report the first-hour values in grams per hour or grams per kilogram, and (4) negative PM emission rates for first-hour values. Of the 129 test reports reviewed, 17 reports (13 percent) contained the following issues with the first-hour reporting requirement:

- 13 test reports were missing first-hour values for some runs.
- 4 test reports contained filter weights rather than required reporting metrics.
- 1 report contained negative values for first-hour emission rates.

Appliances were flagged for revocation criteria based on any of the above identified issues.

Efficiency

All test reports reviewed contained efficiency information. However, 19 test reports did not contain the underlying calculations to show how the efficiency value was derived.

Heat Output

Only 1 of the 129 test reports did not contain heat output information.

Carbon Monoxide Emissions

Carbon monoxide (CO) reporting issues were flagged in 10 (8 percent) of the 129 reports reviewed. The RWH NSPS requires reporting of CO data for each run. Reviewers flagged test reports that did not report individual run CO data as subject to revocation criteria.

Fueling Parameters

40 CFR § 60.534 requires conducting certification tests according to the specifications in the approved test methods. The reviewers evaluated the test reports to determine how the fueling specifications, calculations, and appliance conditioning conformed with test method requirements.

Fuel Length

Standardizing fuel length is critical in replicating test results for research or audit purposes. M28R contains specific language concerning the length of the fuel that can be used for testing. ASTM 3053-17 does not contain fuel length requirements, so ASTM 3053-17 tests were not reviewed under this criterion. M28R specifies that

ASTM 2780 must be used to guide fueling protocols. Section 9.4.1.6 of ASTM 2780 states that "each test fuel piece ... shall closely approximate 5/6 the dimensions of the firebox length." The method defines firebox length as "the longest horizontal firebox dimension." To determine whether a test complied with this requirement, the review team identified the longest firebox dimension reported, multiplied by 5/6, and subtracted 1 inch. This calculation was then compared to the fuel length used for testing. If the length of the fuel used was less than the calculated value, reviewers determined that the fuel did not meet the requirements of the test method.

Of the 60 reports reviewed that used M28R as their certification test:

- 50 percent (30) did not meet the method requirements for fuel length.
- 35 percent (20) could not be determined because the report did not contain required reporting elements, such as fuel length (10) or firebox dimensions (10).
- 17 percent (10) complied with the method requirements.

This is a required element in the test method, therefore reports that did not conform to this requirement were identified as subject to revocation criteria. Reports that did not contain sufficient information to make this determination were flagged for audit criteria.

Fuel Shape

Fuel shape assessments were only completed for the 69 test reports using ASTM 3053-17, as fuel shape is not relevant for M28R, which uses dimensional lumber. Section 3.2.3 of ASTM 3053-17 defines the acceptable fuel shape as "typically round wood 12 to 24 inches long that has been split into triangular, half-round, quarter-round, wedge-shaped, or trapezoidal segments." Squared wood is not included in that definition. In 2019, EPA reinforced this requirement in several emails sent to EPA-approved testing labs, which are attached as Appendix A.

Of the 69 ASTM 3053-17 reports reviewed:

- 61 percent (42) used squared wood for more than 50 percent of the pieces.
- 25 percent (17) did not provide sufficient data to make a determination about fuel shape.
- 14 percent (10) contained sufficient data to show compliance with fuel shape requirements.

Test reports that did not comply with method requirements were flagged under revocation criteria. Where there was insufficient information for a determination to be made, the report was flagged for audit criteria.

Train Precision

Section 11.7 of ASTM Method 2515 requires the use of two sampling trains, which are the media collection systems used in the testing. The PM results from the sampling trains are used to calculate two indicators of measurement accuracy and precision. The first indicator, train precision, assesses the PM catch measurements between the two trains. ASTM 2515 specifies that train precision cannot exceed 7.5 percent. The second calculation compares the emission factors in grams per kilogram (g/kg) for the two trains and cannot exceed 0.5 g/kg. The RWH NSPS rule requires a certifier to complete all the test method calculations and include those calculations in the test report.

Reviewers found that 43 percent (56) of test reports did not contain train precision calculations. Failure to report these data limits a reviewer's ability to assess the PM measurement quality in the certification testing. Of the 73 reports that did report train precision, 16 percent (12) exceeded the train precision limitations. None of the tests exceeded the g/kg criterion. Reports that did not complete this calculation or exceeded the 7.5 percent precision requirement were flagged for audit criteria.

Conditioning Requirement

Both ASTM 3053-17 and M28R include specific requirements for conditioning ("aging") of the appliance before conducting certification testing. Failure to follow these conditioning requirements calls into question the validity of a certification test. Section 2.1.4 of M28R specifies that the heater must be operated for a minimum of 50 hours using a medium burn rate prior to beginning the test. M28R/ASTM2780 requires reporting of the following elements concerning conditioning:

- Time and weight for all fuel added (ASTM 2780, Section 9.1.4).
- Flue gas temperature at least once per hour during testing (ASTM 2780, Section 9.1.5).
- For catalytic appliances, hourly catalytic combustor exit temperatures (ASTM 2780, Section 9.1.6).

ASTM 3053-17 includes conditioning requirements that are similar to those detailed in M28R. Section 8.1.4 states that the appliance must be run a minimum of 50 hours at the medium combustion air setting using the fuel specified in section 8.4 [of that method] with a moisture content of 18 – 28 percent dry basis. Like M28R, ASTM 3053-17 also requires reporting of specific elements, including:

- Weight and moisture content for all fuel added.
- Flue temperature recorded at least once during each hour of operation.
- For catalytic appliances, recorded hourly catalytic combustor exit temperature.

Both methods also require reporting of additional information to assure that the medium burn rate and fueling parameters are met.

Of the 129 test reports reviewed:

- 34 percent (44) contained no data on conditioning,
- 50 percent (65) did not contain sufficient data to determine compliance with conditioning requirements,
- 12 percent (16) had data that indicated conditioning requirements may not have been met, and
- 4 percent (4) contained sufficient data to confirm compliance with conditioning requirements.

Most of the reports met the requirement for the number of conditioning hours but did not supply data to assess compliance with fueling and burn rate requirements. Appliances that failed to include any conditioning data were flagged for revocation criteria. Appliances with incomplete data were flagged for audit criteria.

4.1.5. Revocation Criteria – Documentation of Low Burn Rate Testing

40 CFR § 60.534(a)(1) states that "the low burn rate category must be no greater than the rate that an operator can achieve in-home use and no greater than advertised by the manufacturer or retailer." Reviewers analyzed air setting data in the test reports to identify low burn rate settings, and found that many test reports do not clearly identify the air settings. Some stoves appear to have been tested as fully completed appliances with multiple air settings, while other tests appear to have been performed on prototype appliances with a fixed air stop setting. The level of detail provided on settings varies significantly from report to report. Some provide specific air setting measurements, some state that the setting was fully opened or fully closed without further details, and others fail to report any air setting data. Some test reports state that the unit was tested at the low load defined by the manufacturer but do not provide data to support that statement.

The paucity of information about this element in the test reports made it difficult to determine if testing was completed in compliance with the rule requirements and if air settings in production units match the air setting configuration used in the prototype during certification testing. None of the test reports contained sufficient information to allow a clear determination of conformance with the requirement. Test report reviews found that:

- 43 percent (55) of test reports provided information that raised questions whether testing at the lowest setting was conducted or failed to provide supporting information to make a determination.

- 21 percent (27) of test reports provided no statements or data to communicate that testing was conducted at the lowest air setting.
- 36 percent (47) of test reports stated that testing was conducted at the lowest air setting but provided no data to support that statement.

Many test reports include an affirmative statement that they tested at the low burn rate. However, they failed to provide detailed information sufficient to assure compliance. Other reports provided information that raised questions, such as measurement information indicating air settings were not closed or not reporting on all settings. Appliances that made an affirmative statement without data were not flagged but reviewers recommend EPA assess these reports for compliance. Appliances with information that raised concerns were flagged as "could not be determined." This flag requires more information for a complete determination. No report raised a revocation flag as not meeting rule requirements.

4.1.6. Audit Criteria – ASTM 3053 Test Reports

Unlike other test methods, ASTM 3053-17 allows manufacturers to supply instructions to EPA-approved laboratories for key elements of the test. The method:

- Allows the manufacturer to define a usable firebox volume without defining criteria for those determinations. In contrast, M28R requires using the actual dimensions of the firebox with allowances to subtract areas not deemed as useable firebox volume. Firebox volume is a critical component in determining the amount of fuel used in certification testing.
- Provides no requirements for fuel length. This allows the manufacturer to modify fuel lengths to achieve appliance performance that may not reflect homeowner operation.
- Allows manufacturers to specify fuel shape and to debark fuel pieces so that they more closely resemble dimensional lumber than cordwood.
- Allows the manufacturer to provide instructions to the EPA-approved testing laboratory that include specifications for fuel dimensions and loading and spacing configurations that more closely resemble crib wood testbeds than the less-structured loading patterns typical in consumer use.
- Lacks parameters to adequately define the medium burn rate.

Some of these elements have been addressed previously in the discussion of revocation criteria. Additional factors that triggered flags for auditing include fuel length, debarked wood, fuel placement, and delineation between medium and low test runs.

Fuel Length

ASTM 3053-17 does not include fuel length requirements. However, EPA's Clean Air Act National Stack Testing Guidance[32] informs certification testing. Section VII(5) of EPA's guidance recommends testing with expected in-use fuel conditions "that would present the greatest challenge in meeting applicable emissions standards." Furthermore, the guidance states:

- In light of the fact that: (a) **the Act requires that facilities continuously comply with emission limits** [emphasis added]; (b) the NSPS, MACT, and NESHAP programs all require that performance tests be conducted under such conditions as the Administrator specifies; and the NSPS and MACT programs further require that such tests be conducted under representative operating conditions; EPA recommends that performance tests be performed under those representative (normal) conditions that:

  - represent the range of combined process and control measure conditions under which the facility expects to operate (regardless of the frequency of the conditions); and
  - are likely to most challenge the emissions control measures of the facility with regard to meeting the applicable emission standards, but without creating an unsafe condition.

40 CFR § 60.536 also requires that marketing materials and specifically the owner's manual contain information that must be adequate to enable consumers to achieve optimal emissions performance. Based on emission testing conducted by NESCAUM, the use of longer fuel lengths does not improve emissions performance. Therefore the recommendations to use wood in certification testing shorter than detailed in the owner's manual appear to contradict this requirement. Of the 69 tests reviewed using ASTM 3053-17, 84 percent (58) used fuel that was shorter than the maximum fuel length recommended by the manufacturer in the owner's manual or other related marketing materials, and only 8 tests used the same length recommended as a maximum.

As a guide, reviewers also analyzed how many appliances complied with the 5/6 fuel length rule contained in M28R. Using the M28R calculation, the reviewers found that 58 percent (40) of the ASTM 3051-17 tests would not meet the M28R fuel length criterion, and 22 percent (15) did not have sufficient data to make a determination. Reports that did not include fuel length data or used wood deemed too short using the M28R calculation were flagged for audit criteria. Only two cordwood stoves were tested

[32] US EPA. *Clean Air Act National Stack Testing Guidance*. US EPA Office of Enforcement and Compliance Assistance (2009).

with fuel that met the 5/6 guideline and was not shorter than recommended by the manufacturer.

Debarked Wood

Of the 69 ASTM 3053-17 tests reviewed, 90 percent (62) used debarked wood or failed to provide information about whether there was bark on the fuel. This indicates that using debarked wood in the tests is a common practice, but it is not representative of most homeowner fuel use. Reports that did not include pictures sufficient to determine fuel characteristics or used debarked fuel were flagged for audit criteria.

Fuel Placement

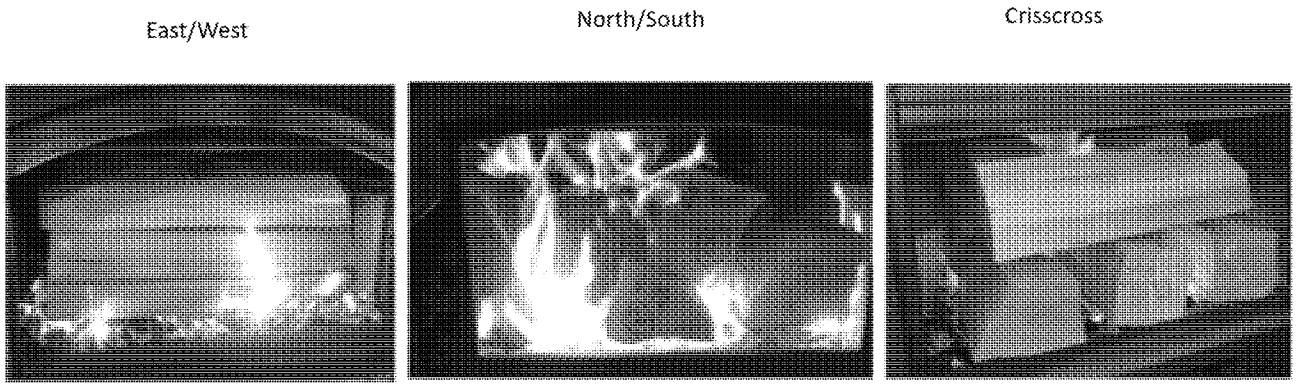
Reviewers assessed fuel placement by determining the firebox's longest dimension to apply a typical loading pattern for the stove. If the appliance's longest dimension was its width, the appliance was deemed an east/west stove. If the longest dimension was its depth, it was considered to be a north/south stove. Reviewers then assessed the fuel configuration pictures that must be included in the test reports per ASTM 3053-17 sections 8.5.9.3 and 8.6.9.1. Of the 69 ASTM 3053-17 tests reviewed:

- 51 percent (35) did not load fuel in the configuration typical of homeowner use (e.g., an east/west stove that was fueled north/south or crisscross),
- 6 percent (4) used the expected homeowner configuration, and
- 43 percent (30) did not provide data on fuel placement and did not provide pictures sufficient to determine loading direction.

Reports that did not include pictures sufficient to determine fuel loading patterns or used patterns that were not deemed appropriate were flagged for audit criteria.

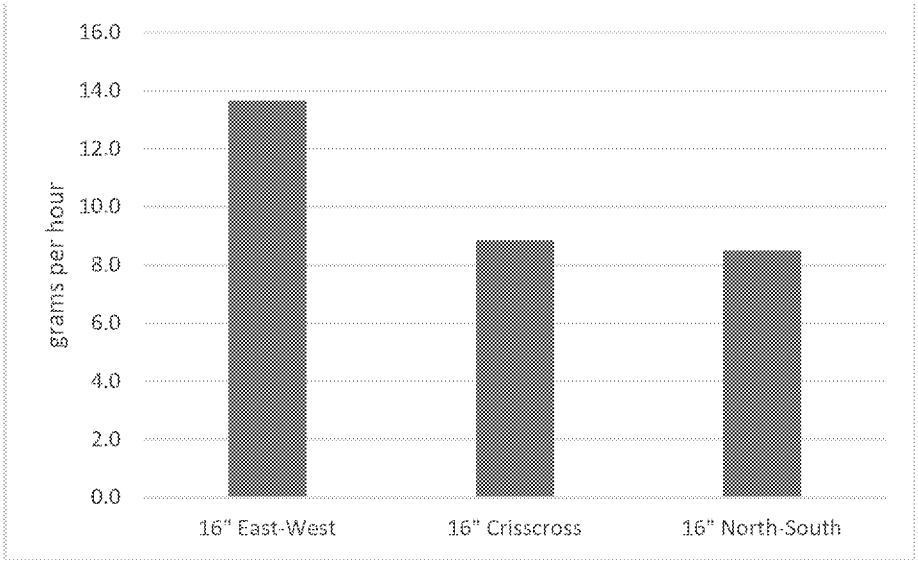
As part of NESCAUM's test method research, emission testing was completed on a medium-sized, non-catalytic, east/west stove. Testing evaluated the emission impact of the three different fuel configurations found in certification test reports, as shown in Figure 9. For an east/west stove, an east/west fuel configuration would be most representative of in-home use.

Figure 9. Three Common Fuel Loading Configurations for Cordwood Stoves



As shown in Figure 10, using the less representative north/south and crisscross configurations in the east/west stove resulted in lower emissions.

Figure 10. Emission Impact of Fuel Piece Configuration

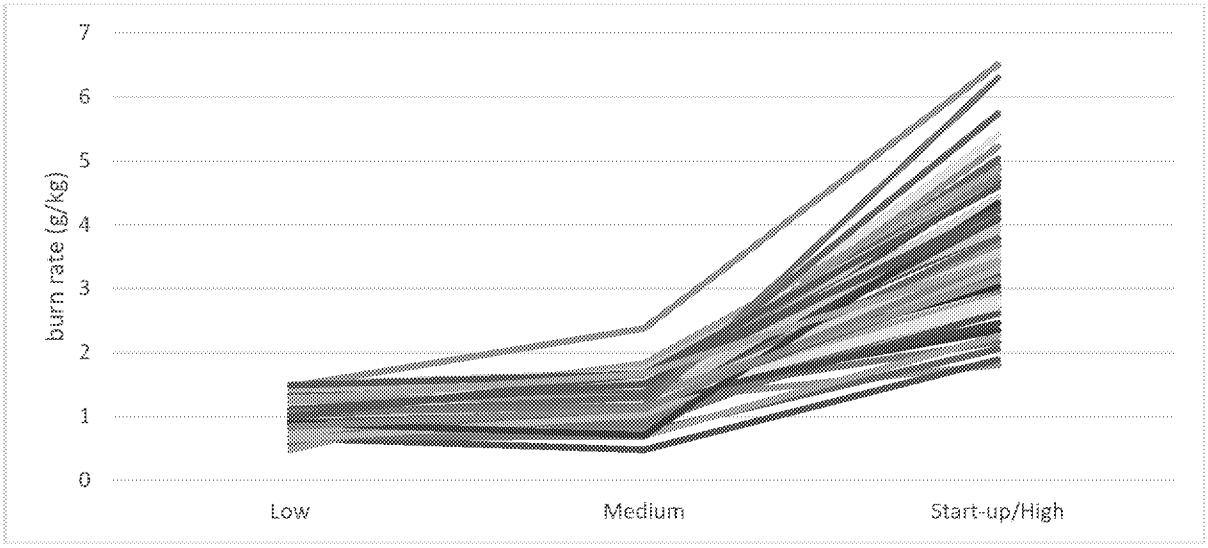


Delineation Between Low and Medium Runs

ASTM 3053-17 does not include specifications for medium burn rate runs. Instead, it only requires that the appliance be tested at an air setting higher than the one used for the low setting. This is important because the medium and low test runs represent 80 percent of the weighting in calculating the certification value. Because the emission standard metric is in terms of emissions over time (g/hr), practices that extend burn times reduce the emission rate measured in the certification test when recognizing the largest amount of PM emissions occur at the start of the test. Analysis of the 69 ASTM 3053-17 tests found that almost two-thirds (46) of the medium air setting's burn rates were within 0.3 kg/hr of the burn rate for the low burn. This gap is 50 percent less than the typical

range EPA provides within M28R for a single burn rate. For example, the range of allowable burn rates in Method 28R for Category 2 is 0.80 to 1.24 kg/hr. Figure 11 shows the burn rates for the low, medium, and high burns in all the ASTM 3053-17 tests. Clearly, the burn rates in the medium burn runs are skewed closer to the low burn rates and are not representative of mid-point testing. In several instances, the medium-fire phase's burn rate was lower than that in the low-fire phase. In some cases, test reports used the same setting, fully closed, for both the low and medium burn, in violation of test method requirements.

Figure 11. ASTM 3053-17 Comparison of Low, Medium, & High Burn Rates



Other Issues Identified with ASTM 3053

In addition to the issues listed above, reviewers identified other irregularities in ASTM 3053-17 test reports, including:

- Review of testing times indicates that ASTM 3053-17 test runs are significantly longer than M28R on similar stoves. Fuel species, fuel loading volumes, and fuel placement parameters can extend testing times, leading to test runs that last two to three times longer than similar M28R runs. NESCAUM research found that 30-50 percent of the testing time was spent burning the last 10 percent of the fuel load, known as the charcoal tail. During this time, no PM emissions occurred. Larger fuel loads further extend the time of the charcoal tail. Extending the burn-times, along with the less stringent emission standard for cordwood testing in the RWH NSPS, may allow manufacturers to meet the emission standard, in g/hr, without optimizing the design of their appliances.
- Reviewers noted that the stoves' average temperature was significantly higher in the low and medium runs of the ASTM 3053-17 tests than in similar appliances

tested using M28R procedures.

- Reviewers noted that some tests reported different species for different burns. Specifically, fuels with lower densities were used for the start-up/high runs, and higher density fuels were used for low and medium runs. Some reports also reported that the test "mainly used X species," indicating that multiple species were used but not reported. Of the 69 appliances that tested with ASTM 3053-17, 13 percent used a mixture of fuel species, and 6 percent failed to report which fuel species was used in testing
- The method states that the emission rate from only one start-up/high fire run is used in the calculation of the certification value, although a start-up/high fire burn precedes both the low and medium burns. Some test reports used the start-up/high fire emission testing from the first day of testing, some used the second day, some averaged emissions of multiple start-up/high fire runs, while others measured emissions on an additional day of testing. Some test reports reported emission measurements for all runs, some claimed to have only obtained measurements for one of the start-up high fire runs, but report data suggested additional data might have been gathered.

Cumulative Analysis of ASTM 3053-17 Deficiencies

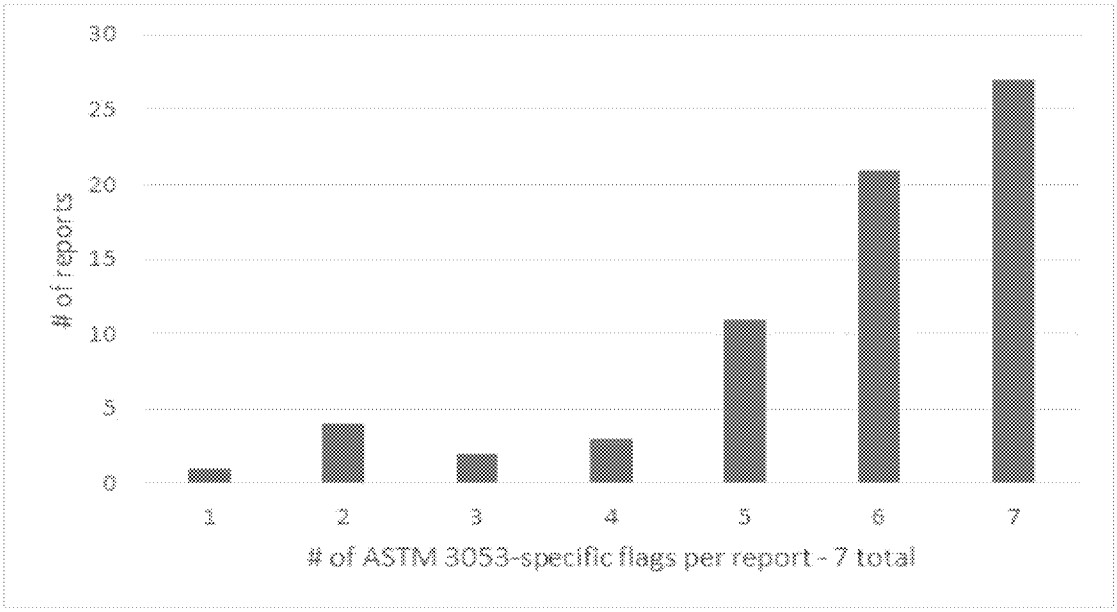
As discussed above, reviewers noted that ASTM 3053-17 tests often included several operational and fueling deficiencies. To assess the cumulative impact of the lack of specificity in the ASTM 3053-17 procedures, reports were reviewed to identify the following seven deficiencies:

1. Wood used was shorter than 5/6 of the longest dimension.
2. Certification testing used shorter wood than the maximum recommended by the manufacturer in the owner's manual or marketing materials.
3. Fuel placement was atypical.
4. Firebox dimensions listed in the test report did not match manufacturer materials.
5. Medium burn rates were within 0.3 kg/hr of low burn rates.
6. Fuel was squared.
7. Fuel was debarked.

As highlighted in Figure 12, all of the ASTM 3053-17 tests had at least one deficiency, and one-third had all seven. Of the 69 ASTM 3053-17 test reports reviewed:

- 96 percent (64) had three or more deficiencies
- 87 percent (59) had five or more deficiencies

Figure 12. Number of ASTM 3053 Deficiencies per Test Report



The incorporation of multiple factors that tend to reduce emissions and that are atypical of in-use stove operation raises questions about the efficacy of the ASTM 3053-17 protocol in assuring compliance with NSPS standards.

We note that beginning in June 2019, US EPA's OAQPS Measurement Technology Group (OAQPS-MTG)[33] sent several emails to ISO-accredited and EPA-approved labs and third-party certifiers raising many of these ASTM 3053 testing issues (*see* Appendix A). In the initial email sent June 13, 2019, OAQPS-MTG stated that it had reviewed certification test reports and identified "discrepancies and concerns" related to testing. These issues included:

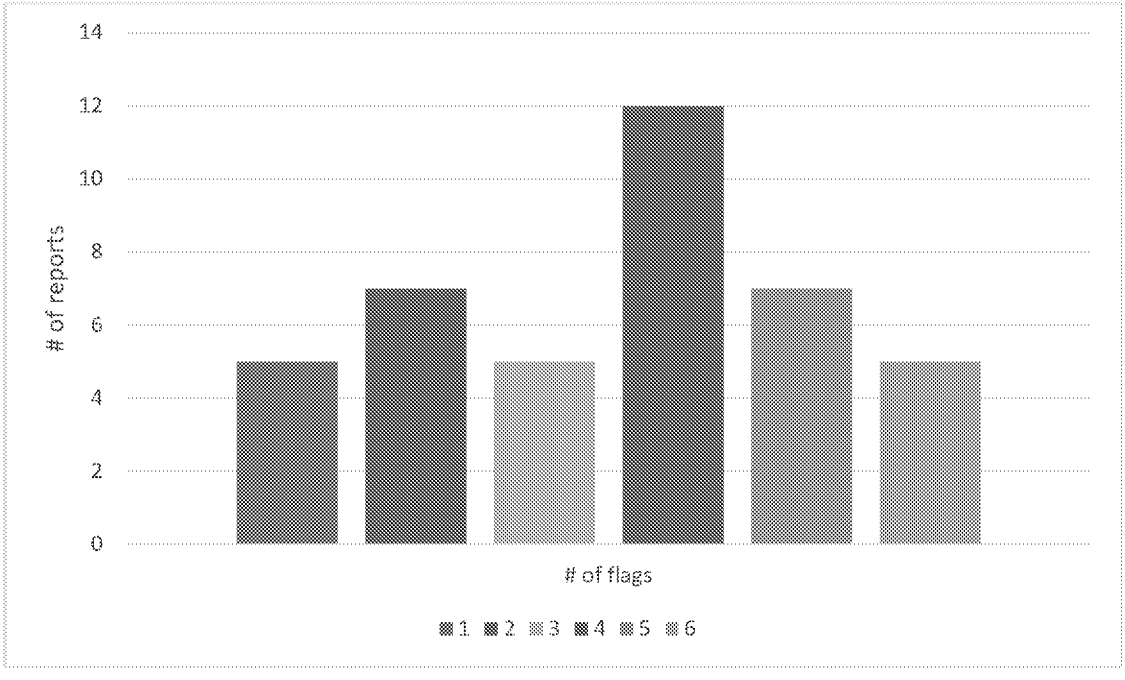
- Lack of reporting on the fuel species used for testing.
- Removing bark from fuel pieces prior to testing.
- Shaping or extreme sorting to constitute preference for a particular shape of fuel or fuel load.
- Loading and lighting of fuel inconsistent with instructions in the appliance owner's manual.
- Using complicated fuel placement instructions that did not reflect homeowner use.
- Manipulating the ash bed.

[33] OAQPS-MTG leads emissions testing requirements. However, a different EPA office handles report certifications. Certification of appliances is the responsibility of EPA's Office of Compliance housed within OECA.

- Failing to meet method-required fuel loading specifications by including shortened fuel pieces, partial loading, or not using the full firebox area to calculate fuel loading.
- Limiting fuel loading during compliance testing.
- Using instructions that expressly override specified sections of the test method or the subpart rule language (inside or outside of the test method requirements).

OAQPS-MTG indicated that manufacturers would need to revise and resubmit corrected compliance test reports where these issues exist. To assess responses, the reviewers for this study looked for updated and revised test reports after the EPA emails were sent, but were unable to locate any. Adding to the difficulty of trying to review subsequently modified test reports is that the EPA OECA Office of Compliance has not issued guidance to require revision tracking of certification reports. Reviewers did identify 40 test reports that the OECA Office of Compliance certified after the OAQPS-MTG June 2019 email, and evaluated those to see if they conformed to the identified issues. Reviewers assessed eight elements, which were all the items in the above bulleted list except the ash bed element, as this proved challenging to review. As shown in Figure 13, all of the 40 reports certified after the 2019 June email contained at least one of the problematic activities that OAQPS-MTG had identified as raising concerns. The number of issues flagged ranged from 1 to 6, with each report having 3.5 flags on average.

Figure 13. Certification Reports that Continued to Include Questionable Activities after June 2019 EPA OAQPS-MTG Email (40 total reports)



4.1.7. Summary of Cordwood Stove Certification Test Reports

Of the 129 test reports reviewed, all contained flags for revocation and audits. On average, each certification test report contained nine missing elements, nine revocation flags, and seven audit flags (Table 4). The findings indicate that issues with cordwood stove certification testing and test reports are widespread and not identified by either ISO third-party reviewers or by EPA OECA.

Table 4. Summary of Cordwood Stove Test Report Reviews Deficiencies

	Missing Report Elements (36 total)	Revocation Criteria Flags (17 total)	Audit Criteria Flags (20 total)
Low	2	3	2
Average	11	8	8
High	24	12	15

4.2. Pellet Stoves

Reviewers identified 96 pellet stoves to review as part of this research. Unlike cordwood stoves, pellet stove emissions are reduced by optimizing combustion of the fuel rather than secondary controls like catalytic or secondary combustion approaches. ASTM 2779 is the only pellet stove test method approved for use under the RWH NSPS. ASTM 2779 is a single test run that allows the appliance to start-up and operate for one hour before starting emission testing. Once emission testing begins, the pellet stove must spend one hour at the maximum setting, two hours at a medium setting, and three hours at the lowest burn rate.

4.2.1. Complete Test Reports

The RWH NSPS requires manufacturers to submit "[a]ll documentation pertaining to a valid certification test, including the complete test report and, for all test runs: Raw data sheets, laboratory technician notes, calculations, and test results" as part of the application for a certificate of compliance with that standard [40 CFR § 60.533(b)(5)]. Within 30 days of receiving certification, "the manufacturer must make the full non-CBI test report and the summary of the test report available to the public on the manufacturer's Web site" [40 CFR § 60.537(g)].

The reviewers assessed report completeness by determining whether the review criteria listed in Table 5 were included in the publicly available test reports. Based on that assessment, each report was assigned to one of the following five categories:

- *Complete:* All non-CBI elements were included in the report.
- *Incomplete-Minor:* One to three elements were missing from the test report.

- *Incomplete-Major:* Four to ten elements were missing from the test report.
- *Incomplete-Seriously Deficient:* More than ten elements were missing from the test report.
- *Missing:* Test report could not be found by searching the manufacturer's website and by conducting additional searches.

None of the publicly available pellet stove certification test reports reviewed were complete. The level of report completeness varied significantly. Of the 96 Step 2 pellet stove certifications identified, 10 percent (10) did not have a publicly available test report, and 15 percent (13) contained less than 20 pages with a deficient amount of data. Table 5 highlights findings from the report completeness review.

Table 5. Assessment of Pellet Stove Report Completeness

Report Element		Reported	Not Reported
Raw data sheets	Data for all test runs	41	55
	Manu. instructions	67	29
	Appliance setting	77	19
	Fuel characteristics[34]	50	46
	Filter data	61	35
Calculations	Efficiency	67	29
	Burn rate	66	30
	Train precision	39	57
Lab technician notes		66	30
Average heat output		80	16
Heat output range		80	16
Discussion of appropriateness & validity		39	57
Discussion of anomalies		41	55
Discussion of unused data		41	55
Conditioning		52	44
Test location		43	53
Third-party certifier		26	70
30-day notice to EPA		15	81
60-day report to EPA		35	61

More than half of the 86 available test reports did not include the following required elements:

- Sufficient documentation on appliance conditioning to determine compliance with the test method.

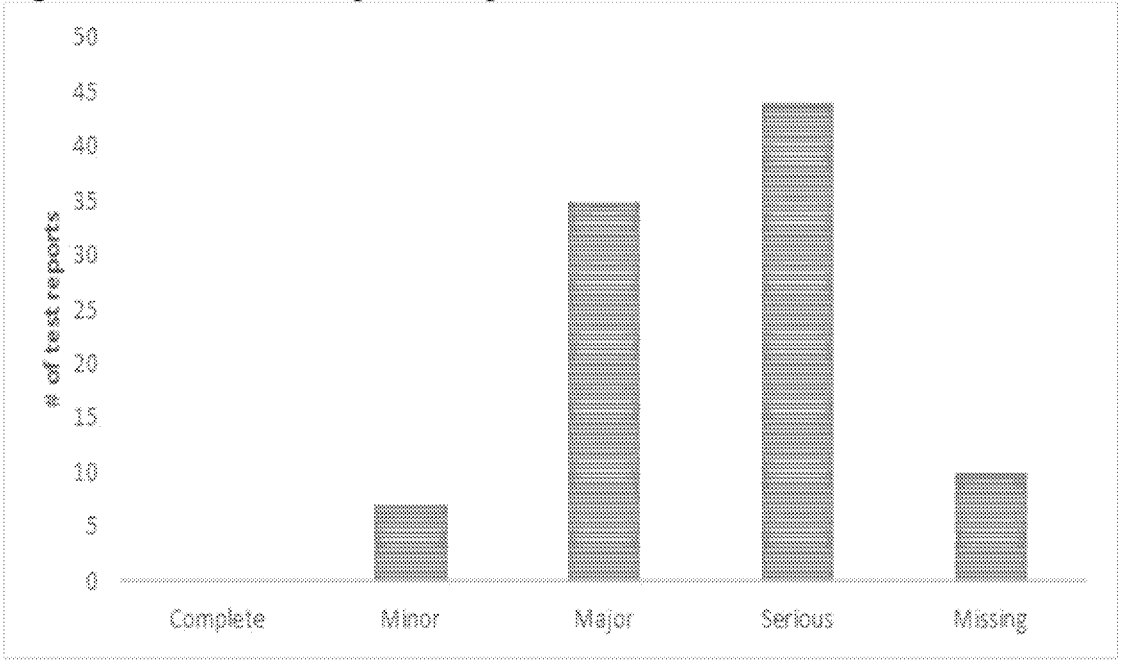
[34] This element addresses fuel length and for ASTM 3053 fuel piece characteristics.

- Identification of the company that provided a third-party review of the report and the report from the third-party certifier.
- Complete information on appliance settings for the test.
- Dual-train precision information.
- Pellet analysis.
- Testing location.

Approximately one-quarter of the test reports did not include raw data sheets, technician notes, filter data, burn rate, or the manufacturer's instructions to the lab.

The overall completeness findings, based on publicly available reports, are presented in Figure 14. The review found 10 test appliances with missing reports, 7 appliance reports with minor deficiencies, 35 reports with major deficiencies, and 44 reports with serious deficiencies. Appliances without publicly posted test reports were flagged as subject to revocation criteria.

Figure 14. Pellet Stove Report Completeness Assessment



The review of pellet stove certification test reports found many of the same issues identified with the cordwood stove reports. Some of the omitted elements from the publicly available test reports may have been included in the certification applications submitted to OECA. However, without access to those elements, states and other parties that rely on EPA's certification process cannot conduct a full review of test results.

4.2.2. Revocation Criteria – Testing Irregularities

This section details testing irregularities identified during the report review process. Testing irregularities is a criterion for revocation under 40 CFR § 60.533(l)(ii).

Negative Filter Values

Only 61 of the 86 publicly available reports contained data on filter weights. Of the 61 reports with filter data, 46 percent (28) reported negative filter weights, a percentage similar to the cordwood stoves. As discussed in more detail in Section 4.1.2, ASTM 2515 requires that the filters be weighed before and after testing. Negative filter weights are recorded when the filters weigh less after the test than before the test. Of the 28 test reports with negative filter weights, four indicated the use of recovery methods to ensure all particulate mass was captured for measurement purposes. As noted with the cordwood stoves, EPA has not developed guidance on proper procedures for handling negative filter values despite the high number appearing in test reports. Certification test reports with this flag were listed under revocation criteria.

4.2.3. Revocation Criteria – Compliance with § 60.536 Requirements

Another revocation criterion specified in the 2015 RWH NSPS is a finding that "the labeling of the wood heater model line, the owner's manual or the associated marketing material does not comply with the requirements detailed in 40 CFR 60.536" [40 CFR § 60.533(l)(ii)]. 40 CFR § 60.536(g)(1) states that information in the owner's manual and associated material "must be consistent with the operating instructions provided by the manufacturer to the approved test laboratory for operating the wood heater during certification testing, except details that would not be relevant to the user." To assess conformance with these requirements, reviewers compared the appliance's heat output and efficiency ratings specified in the test report with the manufacturer's information. The public information reviewed included owner's manuals, product brochures, and websites because "associated marketing materials" are included in this requirement.

Appliance Parameters – Heat Output

Heat output is an important metric because the pellet stove test method specifies that the test's high heat segment must be conducted at the maximum heat output the appliance can achieve. Reviewers compared the heat output recorded in the high-fire portion of the ASTM 2779 test with the heat output data found in the manufacturer's materials. (This is not the same as the average heat report element of Table 5.) If the heat output in the manufacturer's materials was ten percent more than the maximum output reported during the high-fire phase of the test, a revocation flag was generated. A flag for this item raises questions about the certification test's adequacy and representativeness.

The comparison of the maximum heat output in the certification test reports with that listed in the manufacturers' materials found that:

- 73 percent (63) of the appliances reported higher heat output values in their marketing materials than achieved during certification testing.
- 9 percent (8) did not report maximum heat output ratings in their marketing materials.
- 17 percent (15) had maximum heat output data that matched their test reports.

The results of this metric were similar to the findings from cordwood stoves.

Appliance Parameters – Efficiency

Reviewers compared the efficiency reported in 86 certification test reports with the efficiency data obtained from the manufacturers' marketing materials. The review found:

- 37 percent (32) of the appliances had conflicting data.
- 34 percent (29) did not report efficiency information in their marketing materials.
- 29 percent (25) had data that matched.

Appliances were flagged for revocation criteria if the manufacturer's materials' efficiency ratings deviated from the average efficiency ratings reported in the test report.

4.2.4. Revocation Criteria – Failure to Follow Test Methods

Failure to follow the test methods specified in 40 CFR § 60.534 is a criterion for revocation under 40 CFR § 60.533(l)(vii). Several elements were evaluated to determine whether certification tests were performed according to the specified methods, as discussed below.

Required Reporting Elements

Reviewers examined the test reports to determine whether they included PM emissions measured in the first hour of the test [40 CFR § 60.534(d)], as well as the efficiency, heat output, and carbon monoxide emissions per CSA B415.1-10 [40 CFR § 60.534(e)] as required in the test methods.

1-hr PM Emission Rates

Of the 86 test report reports reviewed, 15 percent (12) did not fully report first-hour PM emissions. In six of those reports, no first-hour PM emissions were reported. In the other six test reports, additional test runs were completed that were missing the first-hour emissions parameter. Appliances that did not measure or report first-hour PM data were

flagged as subject to revocation criteria. Unlike the cordwood stove reports, no pellet stove reports included negative first-hour PM measurements or only filter weights.

Carbon Monoxide (CO) Emission Rates

Of the 86 reports reviewed, 9 percent (8) did not report CO measurements. Of the 78 reports that included CO emissions data, 17 percent (13) stated the CO emissions were zero for the entire test or a portion of the test run. Given the nature of combustion, zero CO emissions are unlikely, and the reports of zero CO raised concerns about measurement accuracy for this pollutant. Appliances that did not measure or report CO emissions or reported a zero-emission rate were flagged as subject to revocation criteria.

Efficiency

All reports contained efficiency data. This reporting element had 100 percent compliance. However, 19 reports failed to provide the underlying calculations to support the reported data.

Average Heat Output and Heat Output Range

Of the 86 reports, 5 did not include average heat output. Six reports did not contain the range of heat outputs. However, all the reports contained either average heat output or the range of heat outputs.

Data from Additional Test Runs

40 CFR § 60.533(b)(5) states that test reports must include any data not used in the calculations and, for any test run not completed, the data collected during the test run and the reason(s) why the test run was not completed. Of the 86 reports, 16 percent (14) reported completing additional test runs. For the 14 tests that completed additional runs, 43 percent (6) had partial data from those test runs but not complete data, and 57 percent (8) did not include any data from the extra test runs. The reviewers flagged under the revocation criteria all certification test reports that did not include complete data from the additional test runs.

Medium Burn Rates

ASTM 2779 section 9.4.1.2 requires that the medium burn rate cannot exceed 50 percent of the high burn rate. Reviewers found that:

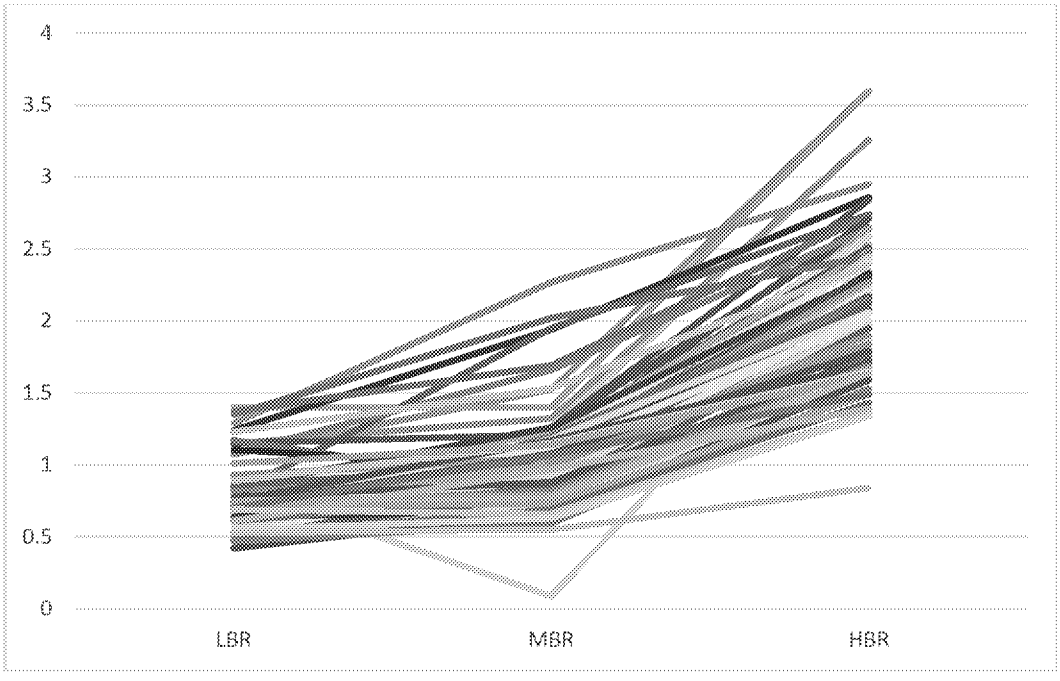
- 29.5 percent (26) appliances did not meet this test method requirement.
- 67 percent (57) appliances met the medium burn rate requirement.
- 3.5 percent (3) appliances did not provide data needed to determine compliance.

Appliances that did not meet the medium burn rate requirement were flagged for revocation criteria unless an ATM had been approved by EPA, which was the case for

one appliance.

Figure 15 provides an overview of the burn rates for pellet stoves. This figure shows a more linear relationship between low, medium, and high burn rates than those observed for cordwood stoves using ASTM 3053-17.

Figure 15. Low, Medium, High Burn Rates for Step 2 Pellet Stoves



Certification Test Report Review: Conditioning

Section 9.1 of ASTM 2779 requires conditioning of appliances prior to conducting certification testing by operating the appliance for 48 hours at a medium burn rate. Reviewers found in the 86 test reports that:

- 5 percent (4) completed and reported conditioning correctly.
- 41 percent (35) failed to report any conditioning data.
- 43 percent (37) provided data that was insufficient to determine if test method requirements were met.
- 12 percent (10) provided data that indicated conditioning did not meet test method requirements.

Of the 10 reports that contained conditioning data not meeting test method requirements, 5 did not show conformance with medium burn rate requirements and 5 indicated only 10 hours of conditioning occurred. Another 12 reports contained data in the report summary indicating only 10 hours of conditioning had been completed. However,

conditioning data was not supplied to confirm those statements. Appliances that did not report or comply with conditioning requirements were flagged for revocation criteria.

While the test method for cordwood stove provides a provision for manufacturers to conduct conditioning, ASTM 2779 provides no such provision, nor could reviewers identify a provision allowing manufacturers to condition pellet stoves before conducting certification testing. Of the 86 reports reviewed, 33 reports stated that the lab completed the conditioning, 17 noted the manufacturer conducted the conditioning, and 36 provided no information on where the appliances were conditioned. Labs are required to report all data obtained from the appliance, so the lack of conditioning data or reporting of who conducted the conditioning suggests that it was done by the manufacturer. Reviewers noted that of the 17 appliances where the manufacturer conducted the conditioning, 7 were completed after the lab indicated it received the appliance.

Multi-Fuel Units

Section 9.4.9 of ASTM 2779 states, "[w]hen alternative fuels are recommended by the manufacturer for use in the pellet heater in the manufacturer's written instructions, conduct a full integrated test run for each of the recommended alternative fuels[.]" Reviewers found that approximately 20 percent of the pellet stoves allow or advertise the use of their appliance with fuels other than wood, such as corn, cherry pits, wheat, rye, and distillers grain. However, certification test reports do not contain testing for those alternative fuels. This deficiency raises concerns about appliance performance when alternative fuels are combusted. Multi-fuel units that did not conduct testing with all the fuels specified in the owner's manual or associated marketing materials were flagged under revocation criteria.

Fueling Parameters

Section 9.3 of ASTM 2779 details requirements for the fuel used in testing. This section includes requirements for analysis of the pellets. According to the test method, all test reports must include the results of an analysis of the higher heating value (HHV) and moisture content of the fuel using specified methods. Units that determine heat output and efficiency using the procedures in section 9.5.1 and Annex 1 of that method must also include ash and ultimate analysis (carbon, hydrogen, nitrogen, and oxygen content) using specified methods. Of the 86 reports reviewed, 49 percent (42) did not include these data. Reviewers also noted that 42 percent (36) did not report the brand or fuel type (softwood, hardwood, mix) of pellet used. Units that did not report the type of pellets used or include analysis of the pellets used in testing were flagged under revocation criteria.

Train Precision

Section 11.7 of ASTM Method 2515 requires the EPA-approved lab to complete two calculations to determine if the precision of the two trains used for PM measurement is sufficient: (1) dual-train precision, which is a comparison of the PM catch in the two trains, cannot exceed 7.5 percent, and (2) the difference in the g/kg measurements for each train cannot exceed 0.5 g/kg. The RWH NSPS requires test reports to include all calculations required by the test method. Additional information on this topic can be found in Section 4.1.4.

The review of pellet stove certification test reports found that 55 percent (47) of the test reports did not include train precision calculations. Failure to report these data limits the reviewer's ability to assess the PM measurement quality. Of the 39 reports that contained train precision information, 15 percent (6) had values that exceeded 7.5 percent. None of the reports violated the g/kg requirement. Units that did not report this calculation or exceeded the 7.5 percent precision requirement were flagged under audit criteria.

4.2.5. Revocation Criteria – Low Burn Rate Testing

40 CFR § 60.534(a)(1) states "the low burn rate category must be no greater than the rate that an operator can achieve in-home use and no greater than advertised by the manufacturer or retailer." Reviewers identified reports where the data indicated the lowest air setting had not been used for the low-fire phase. Many other test reports failed to include data for all air control settings. In these instances, reviewers indicated that compliance with the requirement could not be determined. Reviewers found that:

- 14 percent (12) did not meet the low burn rate requirement.
- 3 percent (3) met the low burn rate requirement.
- 81 percent (70) did not have enough information to determine if the requirement was met.

Test reports where data indicated that testing did not occur at the lowest possible setting or where insufficient data existed to make a determination were flagged under revocation criteria.

4.2.6. Summary of Pellet Stove Certification Test Reports

Of the 86 test reports reviewed, all had at least one element that triggered revocation criteria. As shown in Table 6, on average, each report contained seven revocation criteria flags and five audit criteria flags, and had eleven missing elements. The findings indicate that issues with pellet stove certification testing and test reports are widespread and not identified by either ISO third-party reviewers or by EPA OECA.

Table 6. Summary of Pellet Stove Test Report Reviews Deficiencies

	Missing Report Elements (33 total)	Revocation Criteria Flags (15 total)	Audit Criteria Flags (15 total)
Low	2	3	1
Average	11	7	5
High	29	14	11

4.3. Central Heaters

Wood-fired residential central heating appliances are regulated under Subpart QQQQ of the Part 60 NSPS regulations. While regulated under a different subpart, the requirements for wood-fired central heaters are similar to those used for room heaters. Like room heaters, central heating appliances must be tested using valid certification test procedures, as defined in 40 CFR § 60.5473. That subpart includes the following certification test requirements:

- The Administrator must be notified about the test in accordance with the specifications in 40 CFR § 60.5476(h).
- The test must be conducted by an EPA-approved test laboratory.
- The test must be conducted on a central heater similar to the production model in all material respects that would affect emissions.
- The test must be conducted in accordance with the test methods and procedures specified in 40 CFR § 60.5476.

The team assessed 28 central heaters; 15 cordwood hydronic heaters, 8 pellet boilers, 1 chip boiler, and 3 cordwood furnaces. Certification tests of 9 of the cordwood hydronic heaters, 6 of the pellet boilers, and the chip boiler used ASTM 2618 procedures. Five hydronic heaters were tested according to the EPA M28WHH PTS method. Certification testing of 3 furnaces and 2 pellet boilers used alternative test methods (ATMs). A report could not be found for one cordwood hydronic heater.

4.3.1. Test Report Completeness

Test reports for central heaters were harder to locate on the manufacturers' websites than the stove reports. For 50 percent of the appliances, locating the test reports required contacting EPA. Some manufacturers posted reports at URLs that could not be found by navigating their website or using search engines. This raises questions about the need for a more specific definition of "publicly available."

Reviewers used the list of requirements in the rule as given below to assess the completeness of the posted test reports.

- 40 CFR § 60.5476 discusses general requirements for certification. It states that the manufacturer must "submit a summary and a full test report with all supporting information, including detailed discussion of all anomalies, whether the burn rate categories were properly achieved, and any data not used in the calculations and, for any test runs not completed, the data collected and the reason that the test run was not completed."
- 40 CFR § 60.5475(b)(5) details specific requirements for certification application packages, "including the complete test report and, for all test runs: Raw data sheets, laboratory technician notes, calculations and test results. Documentation must include the items specified in the applicable test methods. Documentation must include discussion of each test run and its appropriateness and validity, and must include detailed discussion of all anomalies, whether all burn rate categories were achieved, any data not used in the calculations and, for any test runs not completed, the data collected during the test run and the reason(s) that the test run was not completed. The documentation must show that the burn rate for the low burn rate category is no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer. The test report must include a summary table that clearly presents the individual and overall emission rates, efficiencies and heat outputs."
- 40 CFR § 60.5475(b)(5) specifies that all emission data, including all information necessary to determine emission rates in the format of the standard, cannot be claimed as CBI.
- 40 CFR § 60.5475(b)(12) requires manufacturers to place a copy of the complete certification test report and summary on the manufacturer's website that is available to the public within 30 days of issuing a certificate of compliance.

The RWH NSPS does not specify all the complete test report elements and the summary that must be publicly posted. However, states and other parties that rely on EPA's certification process must have access to all underlying data to conduct a full review of test results.

The level of completeness in the reports varied considerably. None of the certification test reports were complete, and one appliance did not comply with the public posting requirement. Of the 27 reports reviewed, 48 percent (13) were less than 20 pages in length with a deficient amount of data. However, even test reports that had greater information were missing key elements. Table 7 highlights the findings of the completeness determination, and includes the one device with a missing report.

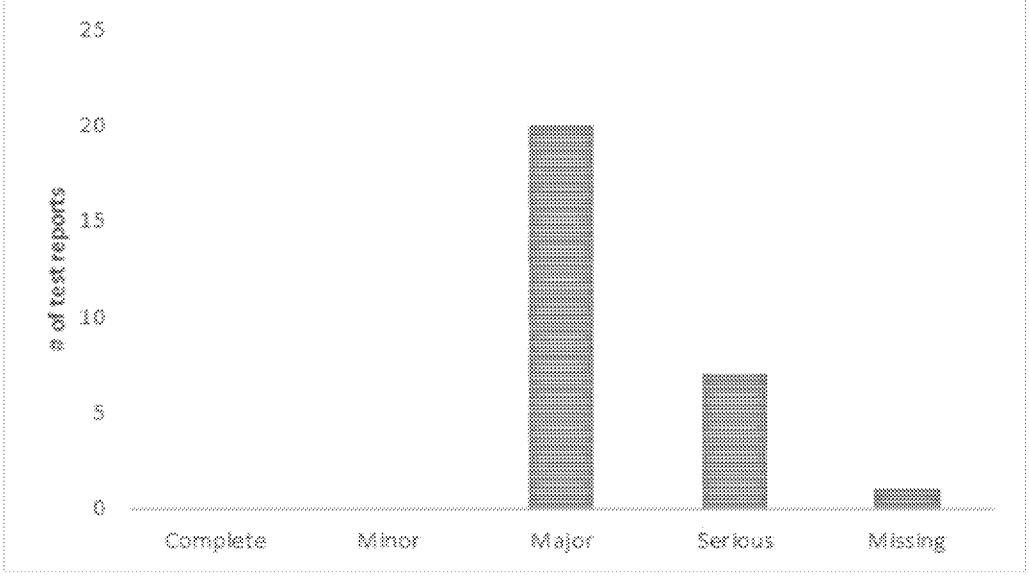
Table 7. Assessment of Report Completeness – Central Heaters

Element	Reported	Not Reported
Instructions to lab on appliance operation	5	23
Raw data	12	16
Lab notes	15	13
Filter data	19	9
Train precision	2	26
Appliance setting	0	28
Burn rate	9	19
Fuel information	9	19
Heat output	27	1
Conditioning	10	18
Photo documentation	7	21

Reports were assigned to one of the following categories based on the report assessments:

- *Complete:* All non-CBI elements were included in the report.
- *Incomplete-Minor:* One to three elements were missing from the test report.
- *Incomplete-Major:* Four to ten elements were missing from the test report.
- *Incomplete-Seriously Deficient:* More than ten elements were missing from the test report.
- *Missing:* Test report could not be found by searching the manufacturer's website and by conducting additional web searches.

Figure 16. Assessment of Central Heating Report Completeness



None of the 27 reports reviewed contained all the data necessary for a complete review. Twenty had three to ten missing elements, seven were missing more than ten elements, and one report could not be located. The appliance for which a report could not be found was flagged under revocation criteria.

4.3.2. Revocation Criteria – Testing Irregularities

The RWH NSPS states that certification for a central heater can be revoked "based on problems or irregularities with the certification test or its documentation" [40 CFR § 60.5475(l)(ii)]. To evaluate testing irregularities, reviewers focused on the handling of negative filter weights. This issue has been discussed in previous sections of this report.

Of the 27 central heating reports reviewed, there was not enough information in 13 test reports to assess this element. Of the 14 certification test reports that included this information, 86 percent (12) reported negative filter weight values. Based on the review, none of the 12 tests that reported negative filter values used recovery procedures to assure that all PM mass had been captured in the weighing process. Further, the negative filter values were not reported in any of the test's summary descriptions in the report.

4.3.3. Compliance with § 60.5478 Requirements

Section § 60.5475(l)(1)(iii) states that a certification can be revoked if EPA determines that "the labeling of the central heater model line, the owner's manual or the associated marketing material does not comply with the requirements of 60.5478." Section 60.5478(f)(1) states that "such information must be consistent with the operating instructions provided by the manufacturer to the approved test laboratory for operating the wood heater during certification testing, except details that would not be relevant to the user." Test reports were assessed to determine whether the laboratory's operational parameters and instructions in the test reports were consistent with those in the manufacturer's materials.

Central Heating Operational Parameters

Unlike the room heaters, reviewers found only limited contradictions between the manufacturer's materials and the testing data. Examples of discrepancies identified included identifying CO emission data as PM results and the reporting of lower heating value (LHV) data without calculating HHV efficiency.

Comparison of Instructions to Laboratories versus Owner's Manual Instructions

Only 5 of the 27 test reports reviewed included the instructions that manufacturers gave to the certification testing laboratory, so it was not possible to make this comparison.

4.3.4. Revocation Criteria – Test Methods

The certification revocation criteria listed in 40 CFR § 60.5475(l)(vii) include the failure of the EPA-approved laboratory to test the central heater using the methods specified in 40 CFR § 60.5476. This section requires that certification tests follow the requirements detailed in the approved methods and specifies that test results must report particulate matter emissions for the test's first hour. Reviewers assessed the reports to determine whether the testing conducted was consistent with the test method requirements

Mandatory Reporting Elements

The rule requires the reporting of first-hour PM emissions, CO, and efficiency. The central heating test methods require reporting of efficiency, heat output, and CO emissions per CSA B415.1-10 [40 CFR § 60.534(e)]. For units testing with ASTM 2618-13, delivered efficiency must also be reported. The reviewers assessed whether those mandatory elements were included in the report's summary data, as discussed below.

First-hour PM Emission Rates

Of the 27 central heating certification test reports reviewed, 8 reports did not contain first-hour PM data. Of the remaining 19 reports, nearly one-third (6) reported negative, first-hour PM emission rates. A negative PM emission rate for the first hour of a test suggests that there were issues with the test. A review of the data found that first-hour values for central heating tests were substantially lower than those for room heating appliances. This finding seems counter-intuitive, as central heating appliances tend to burn more fuel during the initial high-load periods. Additional review of central heating testing should be considered to determine if certification testing follows appropriate protocols for measuring this metric. Appliances that did not report first-hour values or reported negative first-hour values were flagged under revocation criteria.

Appliance Conditioning

ASTM 2618 requires conditioning of appliances at a medium heat draw for 48 hours prior to conducting certification testing (Section 11). However, the method does not define "heat draw" or "medium heat draw." NESCAUM contacted EPA for guidance on this issue and was advised to develop a range somewhere between the lower limit of Category II and the upper limit of Category III testing ranges. Using this approach, reviewers found that of the 27 certification test reports reviewed:

- 7 percent (2) of the appliances appeared to comply with the requirement.
- 7 percent (2) of the appliances appeared not to comply with the requirement.
- 22 percent (6) of the appliances did not have sufficient data in their test reports to determine compliance.

- 63 percent (17) of the appliances did not have conditioning data in their complete test report.

Appliances with reports indicating that the test method's conditioning requirements were not met or which did not have conditioning data in the complete test report were flagged under revocation criteria.

This element highlights a common concern from reviewers regarding the lack of specificity in the test methods. This requirement would benefit from EPA guidance on proper procedures for completing conditioning.

Train Precision

Section 11.7 of ASTM Method 2515 requires the EPA-approved laboratory to complete two calculations to determine if the precision of the two trains used for PM measurement is sufficient: (1) dual-train precision cannot exceed 7.5 percent, and (2) the difference in the g/kg emissions in the two trains cannot exceed 0.5 g/kg. The RWH NSPS requires a test report to include all calculations required by the test method, including these metrics. The reviewers found that 93 percent (25) of the test reports did not contain train precision data. Failure to report these data limits reviewers' ability to assess the data quality of PM measurements. Appliances that did not report train precision information were flagged under revocation criteria.

Efficiency

Section 13.4.5.1 of ASTM 2618-13 states that whenever the efficiency calculated using the stack loss method is lower than the delivered efficiency, the test report must include a discussion of the reasons for those results. The stack loss method calculates the absolute maximum efficiency value that the appliance can achieve during test operations, and the delivered efficiency reports the heat delivered. Theoretically, delivered efficiency cannot exceed the efficiency calculated by the stack loss method unless the boiler is a condensing boiler. Condensing boilers may exceed stack loss efficiency calculations because they capture heat from the flue's water vapor.

Reviewers completed a comparison of stack loss versus delivered efficiency for all appliances. One of the 27 central heating appliances reviewed was a condensing boiler and was excluded from this analysis. Of the other 26 appliances, ten had at least one test run for which the delivered thermal efficiency values exceeded stack loss values. For six of those ten reports, that discrepancy occurred in every test run. Failure to discuss this issue in the test report is a method violation and raises concerns about the test's validity. Appliances that had this discrepancy and failed to address it in the test report were flagged under revocation criteria.

Use of Unapplicable Sections

ASTM 2618 can be used in both cordwood and pellet boiler tests, but the method has separate operational components for each fuel type. Section 12.3 of the method details testing requirements for automatically-fed appliances (pellet or chip boilers). Section 12.2 details operational elements that apply to manually-fed boilers only. The operational components of ASTM 2618 go into greater specificity for manually-fed appliances than automatically-fed appliances. According to Section 12.3, automatically-fed appliances must operate in each test category to use ASTM 2618. Section 12.2 allows manually-fed appliances to conduct two Category 2 tests in lieu of a Category 1 test if the device cannot maintain a fire in Category 1. Section 12.2 also states if an appliance overheats while attempting to operate in any burn category, it cannot use ASTM 2618 for testing.

A reviewer found an automatically-fed appliance used Section 12.2 components to eliminate the requirement to test in Category 1. The reviewer also noted that the appliance overheated in Category 1. It appeared that the appliance used test method practices that were not allowed for the appliance type tested. The review team contacted EPA in September 2020 to determine if an alternative test method had been granted to allow this deviation and learned that no ATM had been given, but the Agency did not explain why it had accepted the appliance's certification test report.

4.3.5. Revocation Criteria – Low Burn Rate Testing Revocation Criteria – Failure to Follow Test Methods

40 CFR § 60.5476) states, "the low burn rate category must be no greater than the rate that an operator can achieve in-home use and no greater than advertised by the manufacturer or retailer." Reviewers found no information in central heating test reports indicating that they had tested at the lowest burn rate. Based on reviews of the test report, reviewers could not confirm compliance with this provision for any test report.

4.3.6. Summary of Central Heating Certification Test Reports

Of the 27 test reports reviewed, each had at least one element that triggered revocation criteria. As shown in Table 8, each test report on average contained nine revocation criteria flags, twelve audit criteria flags, and eight missing elements. This review's findings indicate that issues with central heater certification testing and test reports are widespread and not identified by either ISO third-party reviewers or by EPA OECA.

Table 8. Summary of Central Heating Test Report Review Deficiencies

	Missing Report Elements (33 total)	Revocation Criteria Flags (12-15 total)	Audit Criteria Flags (23 total)
Low	3	4	6
Average	8	9	12
High	12	12	22

4.4. Overarching Issues

In each appliance category, reviewers identified report issues that raised questions about testing integrity. The following section details those elements.

4.4.1. Summary Reports

Reviewers noted that the information contained in the test reports and the associated summaries varied significantly. 40 CFR § 60.533(b)(5) requires that "[d]ocumentation must include discussion of each test run and its appropriateness and validity, and must include detailed discussion of all anomalies[.]" The discussion materials in each of the test reports often failed to call out anomalies. More than 50 percent of the test reports failed to discuss issues encountered in testing. For example, discussions did not report negative filter weights, proportionality issues, train precision deviations, or other issues found in this review. In some cases, the detailed discussion of each run was only a single sentence. Reviewers also noted discrepancies in the data from the summary reports versus the data contained in the raw datasheets. Overall, reviewers noted a lack of reporting of deviations and discrepancies in test report summaries and specific run discussions. This is an area that would benefit from EPA guidance on reporting requirements.

4.4.2. Owner's Manual

40 CFR § 60.536(g) and § 60.5478(f) provide specific information that must be included in the owner's manual. As part of the certification application package, the manufacturer must submit an owner's manual. EPA reviews these manuals to ensure rule requirements are met. Despite EPA review, however, this study found numerous examples of owner's manuals not complying with the rule requirements.

Reviewers identified 16 elements that must be part of the owner's manual. Table 9 summarizes the findings of the review. Approximately 10 percent of the room heater and 37 percent of the central heater owner's manuals could not be found on the manufacturers' websites (a rule requirement), nor were they included in the test reports. On average, cordwood stove owner's manuals had two missing elements, pellet stove owner's manuals had four missing elements, and central heater owner's manuals had one

missing element on average. Appliances that did not have owner's manuals available or had deficient owner's manuals were flagged for audit criteria, as these elements can be addressed without retesting.

Table 9. Summary of Missing Owner's Manual Elements

	Cordwood Stoves	Pellet Stoves	Central Heaters
Low	0	0	0
Average	2	4	1
High	14	13	2
No owner's manual found	0% (0)	10% (9)	37% (10)

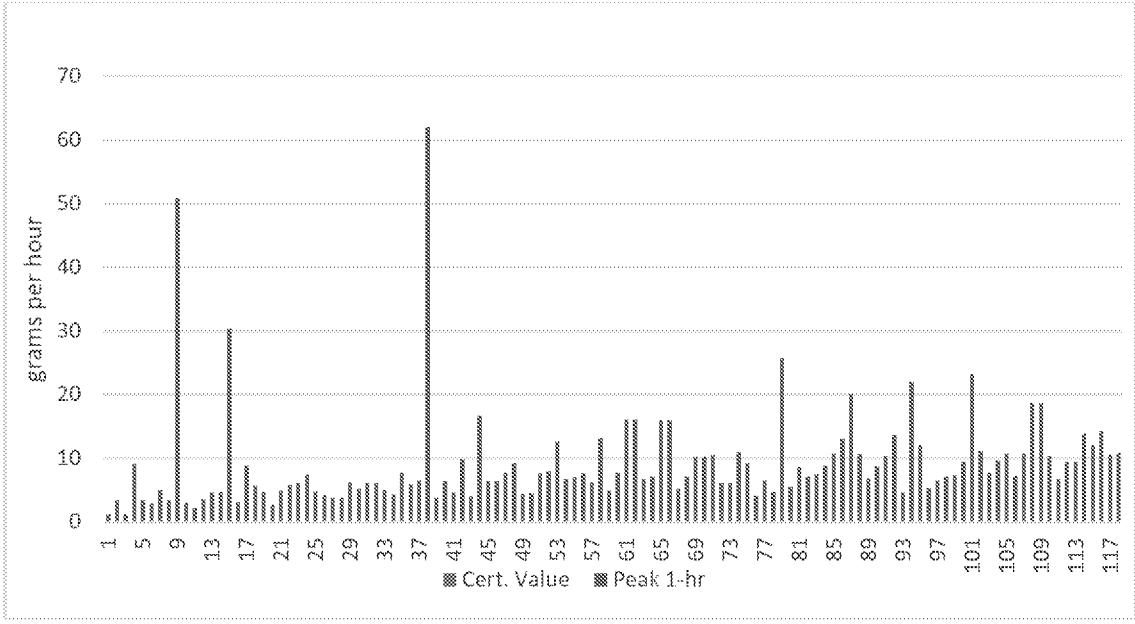
4.4.3. First-hour Values

Reviewers assessed the first-hour metric to determine the performance of the stoves over a short-term period. Reported emission values for certification are the average of multiple runs using average emissions over each individual test run, which can last from 3 to 30 hours or more. Research shows that almost all the emissions from residential wood heating are emitted in the first few hours after fuel loading. Therefore, the first-hour metric provides insights into the ability of an appliance to control for high PM during loading periods.

Space Heaters

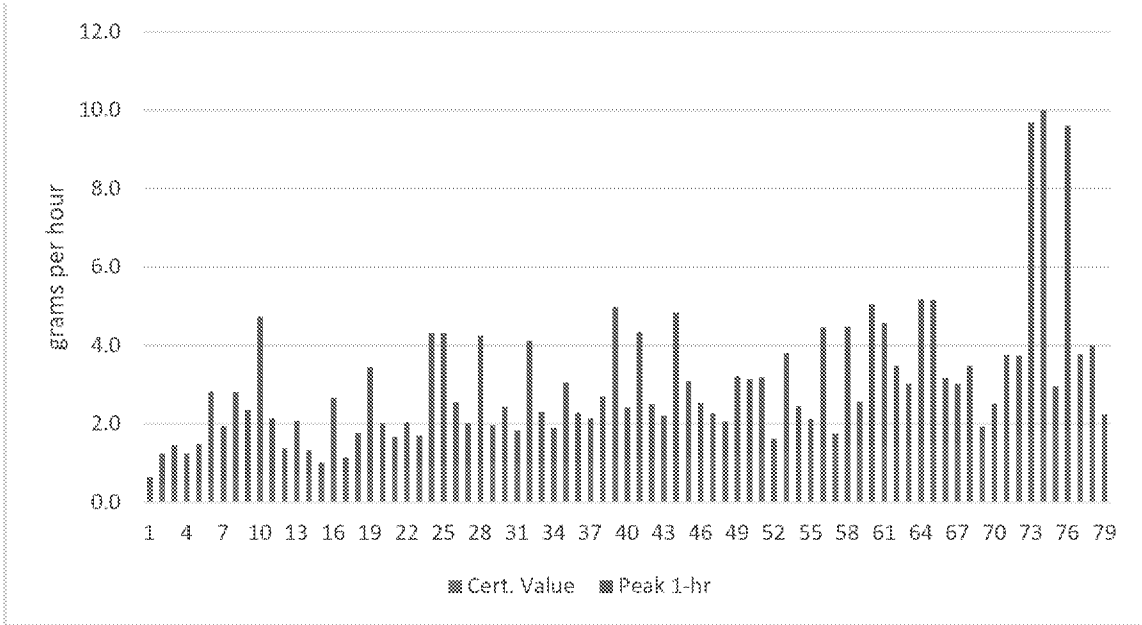
For cordwood stoves, 42 percent (54) had first-hour emission rates that were more than three times higher than the emission standard. On average, first-hour emissions were 616 percent higher than the appliances certification value. The first-hour values ranged from 132 percent to 7,842 percent higher, as shown in Figure 17. Appliances with high first-hour PM values are not necessarily those with higher overall emissions, nor are higher first-hour values associated with a particular control approach (catalytic or non-catalytic).

Figure 17. Certification Values vs. Peak First-hour Values for Cordwood Stoves



Patterns for first-hour PM emission rates for pellet stoves differed from cordwood stoves (Figure 18). Only 15 percent (13) had first-hour emissions three times higher than their average values. On average, first-hour emissions were 175 percent higher than the appliances certification value. The first-hour values ranged from 14 percent to 576 percent higher. Comparing first-hour values for pellet stoves indicates that the first hour of operation may not be the period of highest emission rates.

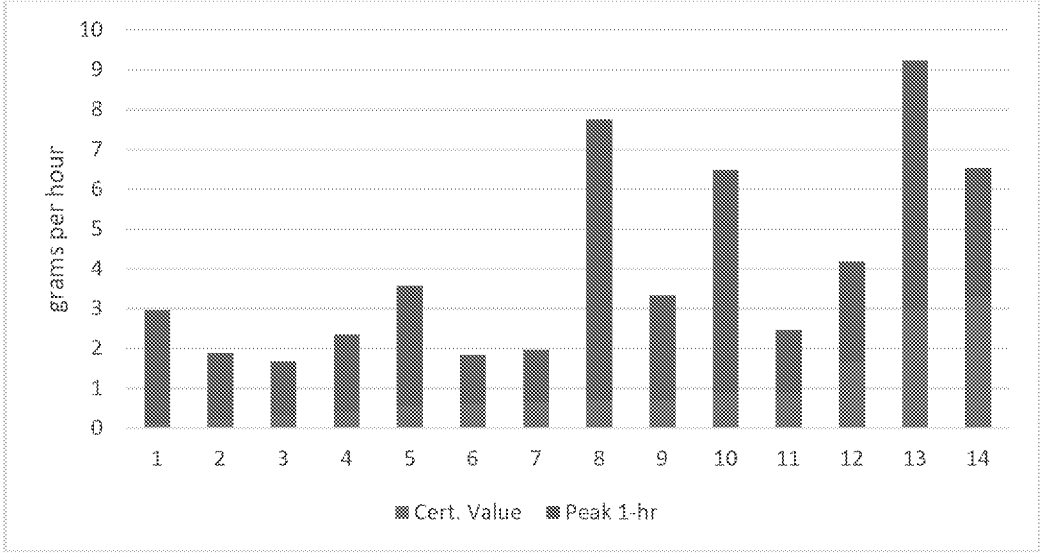
Figure 18. Certification Values vs. Peak First-hour Values for Pellet Stoves



Central Heaters

Reviewers also analyzed first-hour emissions for cordwood and pellet central heaters, as shown in Figure 19. Sixty-four percent (9) had first-hour emissions three times higher than their average values. On average, cordwood central heaters' first-hour emissions were 813 percent higher than the appliances' certification values. The first-hour values ranged from 98 percent to 2,367 percent higher. On average, the first-hour emissions for pellet central heaters were 356 percent higher than the appliances' certification values. The first-hour values ranged from 147 percent to 731 percent higher.

Figure 19. Certification Values vs. Peak First-hour Values for Central Heaters



4.4.4. Audit Criteria – Laboratory Receipt Dates

Under the test methods and rule requirements, test reports need to include the dates of certain events, such as appliance conditioning dates, the date the EPA-approved lab received the appliance, and certification testing dates. Reviewers noted numerous incidents where the dates reported were difficult to reconcile with the timing needed to undertake the steps reported. Examples of contradictory information include:

- The lab completed the conditioning, which requires 48-50 hours of operation, but the lab reported not receiving the unit until the day of or day before testing.
- The lab reported it had completed the conditioning, but the conditioning was completed before the lab reported that it had received the appliance.
- The manufacturer completed the conditioning, but the conditioning was completed after the lab reported that it had received the appliance for certification testing.

These discrepancies raise questions about how the certification test lab defines appliance receipt and what data is gathered during conditioning. Table 10 summarizes the reports with date receipt questions.

Table 10. Summary of Reports with Date Issues

	Room Heaters	Central Heaters
Reports with date issues	76	14
Reports that did not contain date issues	54	3
Reports where determinations could not be made due to missing data	84	10

Reviewers also noted that some appliances seemed to remain at the EPA-approved lab for an extended amount of time – more than a month – before conducting certification testing. Reporting the reason for testing delays in certification test reports would clarify the reason for lags in time between lab receipt and testing.

4.4.5. Audit Criteria – Laboratory Pre-testing

Per 40 CFR § 60.535 and § 60.5477(d)(2)(vi), EPA-approved labs must agree not to perform a certification review on any model from a manufacturer for which the lab conducted research and development design services within the previous five years. The term research is not defined in the rule, but it is generally understood to include gathering information or data on the device's performance.

Reviewers noted numerous examples in certification test reports indicating that the EPA-approved lab conducted pre-testing that could be construed as research, including emission testing, immediately prior to conducting certification testing. This assessment was based on statements in the reports, such as:

- "At the reception of the unit we do preliminary test runs to ensure the unit can reach the limit of the standard. We use those run{s}for aging of the unit."
- "The wood heater has been received in good shape by the carrier. A few screening tests have been done to ensure the repeatability of the results."

Other test reports indicated that the manufacturer ran the appliance in the EPA-approved laboratory facilities to conduct conditioning (i.e., aging) and testing to obtain emission data on the appliance prior to the laboratory conducting the certification test. Reviewers made this determination when the report stated that the manufacturer conducted the conditioning, but conditioning took place after the certification test laboratory received the appliance. Reviewers noted that some conditioning data appeared to resemble certification test loads.

The analysis estimated that 36 to 96 percent of cordwood stoves had EPA-approved laboratory-run tests to confirm emissions performance before the official certification test. The 2015 RWH NSPS stipulates that all testing data obtained by the certification lab must be submitted as part of the test report, whether or not it is used to for certification purposes. Issues with receipt dates, noted above, could be used as a basis for excluding test data. EPA should clarify requirements regarding these elements to assure that certification tests are done appropriately.

4.4.6. Audit Criteria – Appliance Modifications During and After Testing

Review of the reports found evidence that stove design elements were modified during testing or that prototypes tested were not complete models. For example, it appears that several units received at EPA-approved laboratories did not have defined air-stop settings. Reviewers also found examples of EPA-approved laboratories modifying the stop points during the certification test. As noted above, EPA-approved laboratories cannot conduct certification testing for a manufacturer if they have provided research and design services for that manufacturer in the previous five years. EPA should clarify what design and engineering activities EPA-approved laboratories can and cannot undertake prior to certification testing for the 2015 RWH NSPS.

4.4.7. Compliance Assurance Plans

In its certification application, the manufacturer must submit to EPA a compliance assurance plan. This plan must include regular unannounced audits at least once per year. EPA does not conduct the audit visits, as it has delegated inspection activities to the third-party certifiers under the 2015 RWH NSPS. As part of the compliance assurance plan, the third-party certifier must submit reports to EPA within 30 days of conducting an inspection. The reports are required to include deviations from the manufacturer's compliance assurance plan, and if deviations are identified, a plan for corrective action.

Reviewers did not find any information on compliance assurance plans in the publicly posted documentation. Reviewers then reached out to EPA to obtain information on compliance assurance plans, audit reports, and corrective actions. EPA OECA staff informed reviewers that both the plan and the inspection reports are submitted as confidential business information. Reviewers then checked EPA databases that are required to report compliance assurance and inspection activity. Reviewers found no data for these activities in any EPA database they reviewed. Furthermore, reviewers could not find any enforcement activity for this sector as having taken place in the last 20 years.

4.4.8. Compliance Audits

The RWH NSPS rule provides EPA with authority to select appliances for compliance audit testing, which is an available process separate from the revocation criteria. Audit testing is a useful procedural check to verify that production units offered for sale are meeting the emission standards to which the prototype was certified. The process requires the EPA Administrator to notify the manufacturer in writing of the selected heaters/model lines (name and serial number) to test. EPA can also specify the lab that will perform the audit test, which does not need to be the same lab that conducted the selected device's certification test. The manufacturer bears the costs of audit testing. Reviewers examined EPA records and could find no evidence that EPA has ever conducted a compliance audit under either the 1988 or 2015 RWH NSPS.

4.4.9. Sales Reporting Requirements

40 CFR § 60.537(d) and § 60.5479(d) require manufacturers to submit reports to EPA every two years that provide sales for each of their models by state. The rule does not specify that this information is confidential business information (CBI). However, in response to a request from NESCAUM seeking the manufacturer reports, EPA responded that all manufacturers have submitted sales data to EPA OECA as CBI.

NESCAUM also requested sales data aggregated by appliance type (pellet, non-catalytic, catalytic) at the state level. The only information EPA would provide is shown in Figure 20 below. While the release of sales information for individual models may raise CBI concerns, releasing aggregated state sales data for each appliance type would provide significant value for many state programs. Specifically, total sales data by state and by type of stove would help states understand how quickly units are changing over time and what types of appliances are entering their markets. This information also becomes significant in understanding the impacts of model types if they are found to be generally non-compliant under a more rigorous certification program.

Figure 20. Sales Data Supplied by EPA

Wood Appliance Sales Summary

March 9, 2020

Years Reported	2015-2017	% of Market	2017-2019	% of Market
Appliance type				
Wood and Pellet Stoves	190,332	98.72	219,537	97.01
HH	1,117	0.58	1,017	0.45
FAF	1,354	0.70	5,756	2.54
Total Units	192,803		226,310	

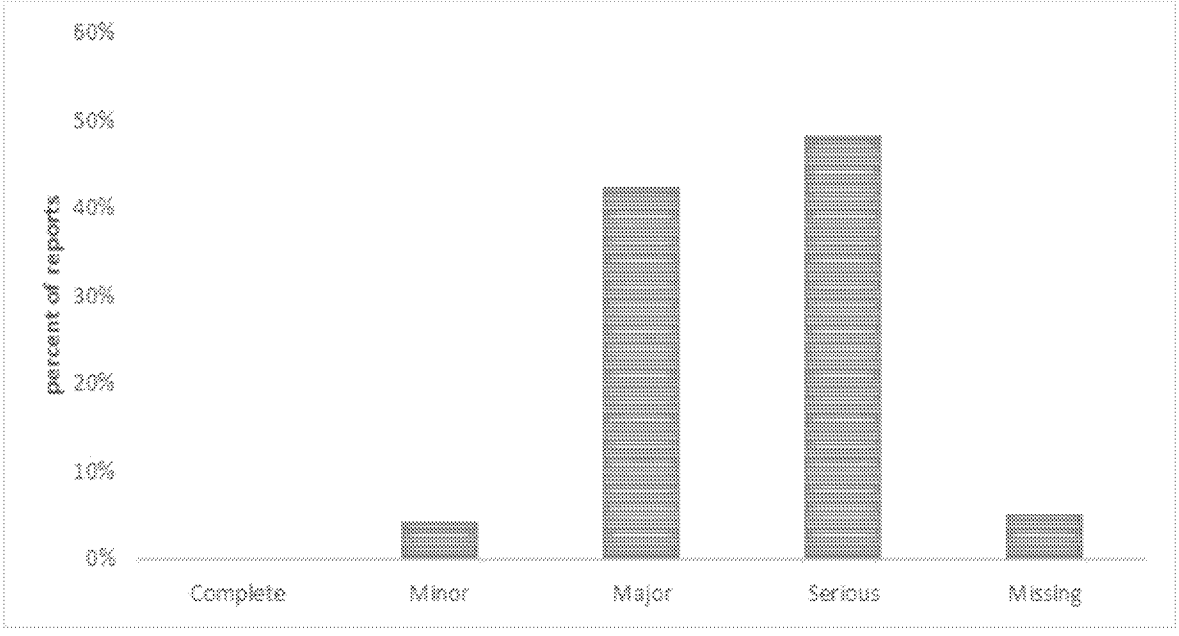
5. RECOMMENDATIONS AND CONCLUSIONS

This study's primary purpose was to evaluate the efficacy of the 2015 Residential Wood Heater NSPS program's third-party system for emission certification testing and review and EPA's oversight and enforcement of this process. The investigation revealed serious and systemic problems throughout the process, from conducting the test to report reviews. The study also identified weaknesses with existing certification test protocols that allow manufacturers and EPA-approved laboratories broad discretion in conducting tests. Those decisions significantly influence measured emissions when testing to certify new residential wood heaters.

5.1. Program Issues

The study attempted to review 255 Step 2 certified wood heater models (131 cordwood stoves, 96 pellet stoves, and 28 central heating appliances) to assess the RWH NSPS program's ability to assure compliance with regulatory emission limits. Reviewers could not find test reports for 13 appliances. Pellet stoves accounted for 10 of the 13 missing reports. Of the remainder of devices, none of their certification reports was found to be complete, and each report contained at least one revocation criteria flag (Figure 21).

Figure 21. Summary of Report Completeness



The study found numerous deficiencies in the test reports, and documented significant deviations from test methods and regulatory requirements. Even when manufacturers submitted additional information for review to address identified deficiencies, the majority of the deficiency flags, whether audit or revocation criteria flags, remained. Table 11 summarizes these findings.

Table 11. Summary of Test Report Review Deficiencies

Deficiency Rates Ranges (avg)	Missing Report Elements	Revocation Criteria Flags	Audit Criteria Flags
	Cordwood Stoves		
Low	2	3	2
Average	11	8	8
High	24	12	15
	Pellet Stoves		
Low	2	4	1
Average	11	7	5
High	29	14	11
	Central Heaters		
Low	3	4	6
Average	8	9	12
High	12	12	22

This analysis found that test methods used to certify residential wood heaters are poorly designed. They lack clarity and specificity for many testing aspects, which reduces testing precision. This analysis shows that manufacturers and EPA-approved laboratories are able to use test method vagaries or voids to employ test strategies that may improve certification testing results but do little to improve appliance performance for consumer use. This undermines the public health and air quality goals of the RWH NSPS program because it allows certification of some units as Step 2 compliant without necessarily incorporating improved design and engineering practices that achieve real-world emission reductions.

The third-party certification review process as conducted was shown to be highly ineffective at identifying and reporting testing irregularities. The study found that third-party certifiers are issuing certificates of conformance for appliances that appear not to meet regulatory test requirements. The documented failures in the third-party process may be due to poor program design, the lack of competency of the groups involved, improper complicity between third-party reviewers and manufacturers, or some combination of the three.

Study results also found that EPA has not used the RWH NSPS auditing provisions to verify that production models are substantially similar to the prototypes used in certification testing, and that those offered for sale are meeting the applicable emission standards. Lack of basic auditing undermines confidence in the RWH NSPS program and its ability to ensure that new residential wood heating appliances are meeting the federal emission standards in the real world.

A major challenge in conducting this study's review of the RWH NSPS program was in obtaining key information from EPA, which demonstrates the need for greater transparency. For example, EPA-approved laboratory inspections and compliance assurance activities are treated as confidential business information (CBI) by EPA and therefore unavailable for public review. By contrast, state and local programs must report all data into EPA's Enforcement and Compliance History Online (ECHO) database and other online reports or dashboards created to assess program efficacy.

These study results provide detailed documentation of the 2015 RWH NSPS program's failures to protect the public from the adverse health effects associated with exposure to wood smoke from new residential wood heaters. Some models certified to the Step 2 standards are not likely to consistently achieve those emission levels when in-use due to a host of weaknesses uncovered with the rule's testing and enforcement elements.

Despite the responsibility and clear authority provided in the Clean Air Act, EPA has failed to effectively enforce the New Source Performance Standards for Residential Wood Heaters requirements. The Agency has not provided the needed oversight, nor has it used the legal remedies provided, including revocation of certificates of conformance or audit testing, to enforce the rule.

5.2. Recommendations for Program Improvement

A strong and broad response is needed to correct the failures of the RWH NSPS program identified through this study. Some of these program weaknesses can be minimized in the near-term if EPA makes a firm commitment, and follows through in good faith, to fully enforce the existing requirements according to the clear language of the RWH NSPS. Others must be addressed through rule changes.

5.2.1. Third-Party Review Process

The EPA Inspector General should conduct an investigation of the third-party review system, and the responsible ISO bodies should call for an inquiry into their accreditation processes. EPA-approved laboratories that conduct certification testing should not be eligible to participate in the third-party review process. EPA should initiate action against third-party certifiers that have not adhered to test method and rule requirements. Finally, EPA should reassess the validity and viability of the third-party review process as a cornerstone of this program in the next update to the RWH NSPS.

5.2.2. Enforcement of Certification Test Results

EPA should conduct a detailed review of the problematic certification test reports identified in this study. The Agency should hold hearings and, where appropriate, revoke certifications for models failing to meet the 2015 RWH NSPS rule requirements.

The findings of this report suggest that some manufacturers and EPA-approved laboratories may be "optimizing" certification tests to qualify models as Step 2 compliant by employing methods inconsistent with the approved protocols. At a minimum, models should undergo compliance audits as allowed per 40 CFR § 60.533(n) to verify the ability of production units to meet the emission standards to which the prototype was certified. To date, EPA has not conducted a single compliance audit during the more than 30 years this program has been in place. To address this, EPA should implement routine compliance audits on 10 percent of appliances each year. The audits should begin by targeting heater models that conducted non-representative tests. Appliances should not be allowed to recertify their appliances without retesting. Waiver provisions that allow manufacturers to avoid retesting of appliances should be eliminated. Retesting should require addressing deficiencies identified in the appliance review sheets, and, given today's communication technologies, remote witnessing of testing.

5.2.3. Targeting Public Funding to Cleanest Appliances

Government funds for wood heater change-out programs should be used only for the cleanest appliances with valid test reports. Government agencies and nonprofits funding change-out programs should disqualify units that are certified as Step 2 compliant but fail to meet the rule's requirements. Taxpayer-supported incentive programs, such as the 26 percent federal tax credit created under the BTU Act, EPA Targeted Airshed grants, and state-supported activities, should only apply to those appliances included on the list of approved models developed by the Alaska Department of Environmental Conservation. This currently is the only thorough review of certification test reports applying the 2015 RWH NSPS requirements.

5.2.4. Improving Certification Test Methods

Current cordwood test methods used to certify residential wood heaters are poorly designed and often lack the specificity to ensure viable and comparable emission results. EPA should revoke or modify problematic test methods. The ASTM 3053 test should be revoked as a Broadly Applicable Test Method. EPA should expedite rulemaking or guidance to close loopholes and reduce deficiencies in ASTM and CSA test methods. Over the longer term, EPA should fully fund efforts to develop new test methods that bring integrity, reliability, and representativeness to testing outcomes.

5.2.5. OECA Enforcement and Oversight

EPA should establish residential wood heaters as a high priority enforcement sector and immediately begin a permanent and effective enforcement initiative . EPA should take enforcement action against third-party certifiers that do not adhere to method and rule requirements. Enforcement action should be taken under 40 CFR § 50.535(b) against

EPA-approved laboratories that fail to follow required procedures or practices with the goal of assuring lab independence and competence while eliminating coordination between labs and manufacturers that inappropriately "optimize" test results and modify appliances during testing. Finally, EPA should request a revision to ISO procedures to ensure the certification system's integrity and competence.

5.2.6. Program Transparency

The results of this analysis demonstrate that significant improvements in transparency are needed for the certification and enforcement components of the RWH NSPS. For example, EPA-approved laboratory inspections and compliance assurance activities are treated as confidential business information (CBI). There is no clear justification why these elements would be considered CBI as they do not pertain to typical CBI elements, such as product designs or manufacturing processes. Instead, EPA should eliminate claims of CBI for all compliance assurance monitoring activities. EPA should develop a strategy to ensure all manufacturers post complete non-CBI test reports and take enforcement action against all manufacturers who post incomplete non-CBI test reports, as defined by the rule. EPA should eliminate the use of confidential ISO compliance assurance audits, and all audit findings should be posted on the Enforcement and Compliance History Online (ECHO) database maintained by EPA. EPA should develop and require the use of a standardized certification report template.

5.2.7. Investigating EPA Program Oversight and Enforcement

The EPA Inspector General or Congress should conduct a review of EPA's OECA and Office of Air Quality Planning and Standards (OAQPS) with a focus on identifying practices to improve Agency oversight and enforcement of the 2015 RWH NSPS program.

5.3. Conclusions

This study covered over 250 Step 2 certified wood heater models (131 cordwood stoves, 97 pellet stoves and 23 central heating appliances) to assess the ability of EPA's program to assure compliance with RWH NSPS regulations. Some of the identified models did not have publicly available certification test reports, as required by the regulations. For the remainder, no report was found to be complete and in full compliance with RWH NSPS requirements. Seventy-two percent of the ISO/EPA certified reports contained issues listed as Criteria for Revocation of Certification under the 2015 RWH NSPS; 24 percent of the test reports were too incomplete to make determinations; and the remaining 4 percent had minor issues.

The third-party certification review process appears highly ineffective at identifying and reporting testing irregularities. The documented failures in the third-party process may be

due to poor program design, the lack of competency of the groups involved, improper complicity between third-party reviewers and manufacturers, or some combination of the three. Study results also highlight the lack of EPA's use of the auditing program to ensure production models are substantially similar to the prototypes used in certification testing, and that those offered for sale are meeting the applicable emission standards.

This analysis also uncovered a lack of transparency in the RWH NSPS program. Reviewers were often unable to access key data and information on certification testing. An overly broad assertion of confidential business information has removed non-proprietary compliance assurance activities from public review.

Based on the identified shortcomings in this review, the 2015 RWH NSPS certification program fails to assure that new residential wood heaters are uniformly cleaner than past devices before the new standards went into effect. A flawed testing and review system coupled with a historical lack of EPA enforcement of basic program elements work in tandem to undermine the public health goals of the program. The end result is a program devoid of any credibility to ensure that new residential wood heating appliances are meeting federal emission standards, and that gives every indication that scarce public resources are being misspent on incentive programs meant to encourage the more rapid introduction of cleaner wood burning appliances that truly reduce emissions.

BIBLIOGRAPHY

ASTM E2515-11(2017), *Standard Test Method for Determination of Particulate Matter Emissions Collected by a Dilution Tunnel*, ASTM International, West Conshohocken, PA, 2017.

ASTM E2618-13(2019), *Standard Test Method for Measurement of Particulate Emissions and Heating Efficiency of Solid Fuel-Fired Hydronic Heating Appliances*, ASTM International, West Conshohocken, PA, 2019.

ASTM E2779-10(2017), *Standard Test Method for Determining Particulate Matter Emissions from Pellet Heaters*, ASTM International, West Conshohocken, PA, 2017.

ASTM E2780-10(2017), *Standard Test Method for Determining Particulate Matter Emissions from Wood Heaters*, ASTM International, West Conshohocken, PA, 2017.

ASTM E3053-18e1, *Standard Test Method for Determining Particulate Matter Emissions from Wood Heaters Using Cordwood Test Fuel*, ASTM International, West Conshohocken, PA, 2018.

Butcher, T., *Review of EPA Method 28 Outdoor Wood Heater Test Results*. NYSERDA, Albany, NY, 2011.

Canadian Standards Association. *Performance Testing of Solid-Fuel-Burning Heating Appliances*, CSA B415.1-10 (R2015).

Commission for Environmental Cooperation, *Residential Wood Use Survey to Improve U.S. Black Carbon Emissions Inventory Data for Small-Scale Biomass Combustion*, Montreal, Canada, 2019.

US EPA, *Clean Air Act National Stack Testing Guidance*, US EPA Office of Enforcement and Compliance Assistance, 2009.

US EPA, *Small Entity Compliance Guide for 'Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces'*, EPA 456/B-15-002, US EPA Office Air Quality Planning and Standards, 2015.

US EPA, *Process for Developing Improved Cordwood Test Methods for Wood Heaters,* Discussion Paper, US EPA Office Air Quality Planning and Standards, March 2016.

EPA-HQ-2021-5551

Appendix A: EPA Emails on Certification Testing

Appendix A: EPA Emails on Certification Testing

Note: The following three email texts sent by EPA are unedited copies of the originals.

Email 1 of 3

From: Johnson, Steffan
Sent: Thursday, June 13, 2019 4:19 PM
To: Alex Tiegs <atiegs@omni-test.com>; 'brian.brunson@intertek.com' <brian.brunson@intertek.com>; 'brian.ziegler@intertek.com' <brian.ziegler@intertek.com>; 'claude.pelland@intertek.com' <claude.pelland@intertek.com>; 'dpower@polytests.com' <dpower@polytests.com>; 'dvoracek@szutest.cz' <dvoracek@szutest.cz>; 'gpiedalue@polytests.com' <gpiedalue@polytests.com>; Henrik Persson <henrik.persson@ri.se>; Jared Sorenson <jsorenson@omni-test.com>; Jes Andersen <jsa@teknologisk.dk>; 'jsteinert@dirigolab.com' <jsteinert@dirigolab.com>; Kelli O'Brian <kelli@clearstak.com>; 'lennart.aronsson@sp.se' <lennart.aronsson@sp.se>; Toney, Mike <Toney.Mike@epa.gov>; 'John Steinert' <john.steinert@pfsteco.com>; 'WTerpstra@PFSCorporation.com' <WTerpstra@PFSCorporation.com>; 'Benjamin.Barker@csagroup.org' <Benjamin.Barker@csagroup.org>; 'Travis.F.Hardin@ul.com' <Travis.F.Hardin@ul.com>; Laura Hinton <lhinton@guardiantestlabs.com>
Cc: Sanchez, Rafael <Sanchez.Rafael@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; Aldridge, Amanda <Aldridge.Amanda@epa.gov>; Baumgart-Getz, Adam <Baumgart-Getz.Adam@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Boyd, Rochelle <Boyd.Rochelle@epa.gov>; Lowe, Theresa <Lowe.Theresa@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Hemby, James <Hemby.James@epa.gov

Subject: Reporting Emissions Test Results when using Alt-125, or Alt-127 (ASTM E-3053)
Importance: High

To all EPA Approved Wood Heater Test Laboratories and Third Party Certifiers,

In reviewing some recent test reports that have been submitted to EPA with the intent to certify a wood heater to the Subpart AAA cordwood emissions standard, there are some discrepancies and concerns that we are observing, and we will be asking some manufacturers to revise and resubmit a corrected compliance test report. At least one of these concerns (noted below) is critical and may require re-testing. All of these items are important enough to request a corrected report, and we wanted to let all of you know just why you may be contacted by your client(s) with such a request.

We have seen a number of test reports using the Alternate Test Method and ASTM E-3053 that do not identify the species of cordwood used for the compliance testing. While

it is true that the ASTM method allows selection from a wide list of wood species, the test report must identify the species of fuel used. This is specified not in the test method but in the General Provisions to EPA 40, Part 60.8 (f)(2) which governs content that must be included in the test report. Paragraph (iii) of this section reads: *"(iii) Description of the emission unit tested including fuel burned, control devices, and vent characteristics; the appropriate source classification code (SCC); the permitted maximum process rate (where applicable); and the sampling location."*

We are asking that test reports that did not identify the wood fuel species burned during a compliance test submit an amended test report to this Agency. If you are a third party reviewer and have certified such a test report, we request that you include this item, along with other items listed in the General Provisions, in your review checklist.

We have seen some test reports that reference "manufacturer's instructions" for conducting the certification test, yet those instructions were not included in the test report. The requirement to submit this information is to comply with the General Provisions of 60.8(b) and (c). The guiding principle here is that ONLY the EPA Administrator has the ability to modify a test method for any reason, and these manufacturers instructions do NOT supersede the test method. Also, the National Stack Test Guidance Document (available here: https://www.epa.gov/compliance/clean-air-act-national-stack-testing-guidance) clearly states that the emissions test report "*must demonstrate all information from the test lab such that it is a stand-alone document capable of reproducing the entirety of the test results*". As such, all information pertinent to the operation of the appliance during the testing must be included in the test report (per 40 CFR 60.534). Also, as such instructions are relevant to how the testing was conducted, this documentation is Confidential Business Information (CBI).

We are asking manufacturers that have issued test reports where the manufacturers provided instructions to the test lab regarding appliance operation during the test, and that documentation was NOT included in the emissions test report available to the public, to take corrective action and submit an amended test report to this Agency. If you are a third party reviewer and have certified such a test report, we request that you now include this item, along with other items listed in the General Provisions, in your review checklist.

We have seen some test reports that contain manufacturer's instructions that may run contrary to the test method and rule requirements. Specifically, we have seen instances where manufacturers have directed laboratories to conduct low load testing with air inlet damper settings at "specified distances from fully closed", meaning that the unit may not be getting tested at the lowest operating rate that a homeowner will have access to during the course of normal daily operation. Testing at the lowest setting a consumer will be able to operate the appliance in their home is specifically required in 40 CFR 60.534.

Test labs and third party certifiers who are conducting /observing testing where manufacturers provided such instructions AND where you have knowledge that such devices are capable of combustion with air inlet dampers more fully closed than those setpoints specified by the manufacturer review the rule requirements with their client(s)

and either select the lowest available setpoint or modify that stove model to fix the lowest available air inflow setting at that specified point, to remain fixed thereafter. Furthermore, we insist that laboratories and third party certifiers add the requirement(s) of 60.534 to their checklists and take necessary steps to not look past this requirement in the future. Appliance models found to have been tested in this manner and subsequently certified, will need to be reviewed by EPA on a case-by-case basis. As a reminder, third-party certification is an attestation that all testing was conducted as specified in the regulation; certification of testing that does not meet the regulatory requirements may result in loss of EPA Approval status.

We have seen some test reports where cordwood fuel is used to demonstrate compliance, and the dimensions of the "cordwood" very closely match the dimensions of crib fuel. While we recognize that it may happen that occasionally a wood splitter would produce a piece where the minor cross section is nearly equal to the major cross section of the fuel piece, we expect that this happens infrequently and is not normal for every piece in a fuel load.

We ask that labs and third party certifiers use pieces that approximate hand-split fuel and not something that seems to be far more selective. While fuel pieces are 'selected' for the test based on size and weight and, to some extent, dimension, we expect to see fuel loads that are more random (in terms of piece-to-piece comparisons) than not.

As always, thank you for continuing to support the EPA Wood Burning Appliance Certification Program. Please do not hesitate to reach out to us and ask questions, any time, with respect to any certification tesing you are undertaking; we are happy to offer our technical direction to help you, and your clients, meet the subpart AAA and QQQQ regulatory requirements.

Email 2 of 3

Subject: RE: Reporting Emissions Test Results when using Alt-125, or Alt-127 (ASTM E-3053)
From: "Johnson, Steffan" <johnson.steffan@epa.gov>
Date: 7/15/19 11:31 am

CORRECTION TO ITEM 2 BELOW: NO EMISSIONS TEST INFORMATION IS CONFIDENTIAL. The last sentence is intended to read "is NOT Confidential Business Information".
I regret the confusion this may have caused. Such information MUST be included in the non-CBI report.
Sincerely,
Stef Johnson

Email 3 of 3

From: Johnson, Steffan
Sent: Wednesday, December 4, 2019 10:11 AM
To: bdavis@omni-test.com
Cc: Alex Tiegs <atiegs@omni-test.com>; Ken Morgan <kmorgan@omni-test.com>; Boyd, Rochelle <Boyd.Rochelle@epa.gov>; Sanchez, Rafael <Sanchez.Rafael@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Yellin, Patrick <Yellin.Patrick@epa.gov>; Aldridge, Amanda <Aldridge.Amanda@epa.gov>; Baumgart-Getz, Adam <Baumgart-Getz.Adam@epa.gov>; Hemby, James <Hemby.James@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Lowe, Theresa <Lowe.Theresa@epa.gov>; Lessard, Patrick <Lessard.Patrick@epa.gov>

Subject: RE: Morso Model 5660B Certification Inquiry
From: Toney, Mike <Toney.Mike@epa.gov>
Sent: Tuesday, December 3, 2019 9:13 AM
Dear Mr. Davis,

Mike Toney forwarded your questions below to my attention, and I will endeavor to address your concerns to an appropriate level.

First off, let me be very clear that the Third Party Certification program is intended to function as an "…independent third party accredited under ISO-IEC Standards 17025 and 17065 to perform certifications, inspections and audits by an accreditation body that is a full member signatory to the International Laboratory Accreditation Corporation Mutual Recognition Arrangement and approved by EPA for conducting certifications, inspections and audits" under subparts AAA and QQQQ of US CFR, Part 60. I state this up front to point out that EPA expects that Third Party Certifiers have processes in place that guide them through situations such as the questions you pose below, or the statements made by the manufacturer in the attached letter and instructions. That said, we're all trying to navigate the rule and cordwood compliance testing is relatively new, so I'll try to shed some light on how the Measurement Technology Group views the compliance test process in order to help you in your Determination Guidances. Keep in mind that the final review is conducted by our Office of Enforcement and Compliance Assistance in Washington, D.C., who conducts a 'trust but verify' review of the submitted test report and associated/required materials prior to granting a model Certification; I say that to let you know that what the Measurement Technology Group may view about a particular test question is <u>not</u> the final word on compliance certification.

Let me begin by turning back the clock to the 1988 NSPS rule that established Subpart AAA. Here is an excerpt from the preamble of EPA's 1988 wood heater rule:

"In response to questions received after proposal from accredited laboratories, a provision has been added clarifying the role of wood heater manufacturers during certification testing. This provision limits instructions by the wood heater manufacturer on wood heater operation to written communications prior to the beginning of the

certification test. The only exception as for the manufacturer who observes that the test is being improperly conducted. He may then notify in writing laboratory personnel of the problem(s). All instructions and notifications relating to the certification test shall be reported in the test documentation. Any special instructions are to be consistent with the operating instructions in the owner's manual, except to the extent that they address details of the certification test (e.g. achieving specific burn rates) that would not relevant to homeowner operation. In other words, the wood heater should not be operated during the certification test in a manner significantly different from homeowner operation in order to increase the likelihood of passing."

That statement holds today, under the new NSPS as well as it did in 1988. This means that while a manufacturer may provide input to the test laboratory on operation of the appliance during the certification test, specific instructions that stray from typical homeowner operation, intended to lower the emissions of the appliance solely for the certification test, are not acceptable.

- MTG believes that examples of such instructions with respect to a cord wood compliance test include (but are not limited to):
- Removing bark prior to use as test fuel.
- Shaping or extreme sorting to constitute preference for a particular shape of fuel or fuel load (not to emulate crib fuel or create 'triangular crib fuel').
- Loading and lighting fuel inconsistent with instructions in the appliance owner's manual.
- Complicated fuel placement instructions that would not ever be followed by a home owner.
- Manipulation of the ash bed inconsistent with, or otherwise in addition to, instructions included in the appliance owner's manual, or in a manner that a homeowner is unlikely to ever follow.
- Failure to meet method required fuel loading specifications (shortened fuel, partial loading, or not using the full firebox area to calculate fuel loading).
- Limiting fuel loading during compliance testing that will be easily overridden by a home user seeking a longer burn time.
- Instructions that specifically override specified sections of the test method OR the subpart rule language (inside or outside of the test method requirements).

For reference, we have put together what we feel reasonably describes cord wood fuel: A cross sectional area end view should not form a perfect (or near perfect) square (except occasionally) but to be of a triangular or trapezoid shape with ill regular lines, some curvy some, zig zag. But not all having the same length (pie shape is fine). It is acceptable to have some bark but not having all the bark stripped off. It is not acceptable for a test fuel load to consist of all bark being stripped off of every piece. We expect to have wood pieces that are torsion shaped or pieces that are rounds, semi-rounds, have rounded edges, or are larger at one end and smaller at the opposite end. No fuel load should consist of pieces all chosen to be the same size/shape characteristics.

Regarding the comment that states "we to not read that the procedure we have used is illegal, therefor we must assume that we can use the procedure" is not a statement that we ascribe to be true, on its face. Meaning, that we look for common sense and reasonableness in such interpretations. For example, the method does not say that the lab cannot cube the fuel into square, even chunks. It might burn clean, but would a home owner ever operate the appliance in that manner? No. So, use a reasonableness test when reviewing such procedures and ask yourself if you feel it is reasonable for the manufacturer to assume that such instructions, which should also be included in the operators manual, would be followed by the average homeowner during day to day operations. If yes, then I think you have your answer and, if no, likewise, you have your answer.

I would suggest that you pay close attention to items not included in the test method as well, such as instructions for setting a damper for a low burn rate test. Subpart 60.533(b)(5) has some requirements that must be in the test report and while this is a good checklist, the requirement there for documentation of *"...the burn rate for the low burn rate category must be no greater than the burn rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer..."* is of particular importance. So where you have a manufacturer telling you that *"...the damper setting for the low burn rate test should be set to XX millimeters from a fully closed position..."*, it is of key importance for your process to verify that the aforementioned damper is incapable of being closed further during ANY operation in the home than where it was placed during the compliance test. To clarify, the homeowner shall not be able to burn fuel at a lower rate than the lowest achieved during the compliance test, and this must be documented and such documentation included in the report to EPA.

Regarding your question about the room air blower, MTG feels that it is not a good idea to make assumptions about the impact of the blower when burning crib fuel and apply that directly to a cord wood test.

I hope this is helpful. Should you have questions about certification I would recommend you contact Dr. Rafael Sanchez who is copied on this e-mail.

Very sincerely,

Stef Johnson

Steffan M Johnson | Leader – Measurement Technology Group | US EPA Office of Air Quality Planning and Standards | Air Quality Assessment Division | 109 T.W. Alexander Drive, RTP, NC 27710 | Mail Drop: E-143-02 | Phone: (919) 541-4790 | Cell: (919) 698-5096

Message

From: Goffman, Joseph [jgoffman@law.harvard.edu]
Sent: 1/20/2021 4:46:21 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: DC Cir strikes down ACE RULE
Attachments: American Lung Assn v. EPA (DC Cir.), No. 19-1140 Per Curiam Decision.pdf

Joseph Goffman | **Executive Director**
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202.746 4693 | jgoffman@law.harvard.edu
Twitter: **@JosephGoffman**

From: Freeman, Jody
Sent: Tuesday, January 19, 2021 10:28 AM
To: Just, Robin L <rjust@law.harvard.edu>; Vizcarra, Hana V. <hvizcarra@law.harvard.edu>; Perls, Hannah <hperls@law.harvard.edu>; Goffman, Joseph <jgoffman@law.harvard.edu>
Subject: DC Cir strikes down ACE RULE

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 8, 2020 Decided January 19, 2021

No. 19-1140

AMERICAN LUNG ASSOCIATION AND AMERICAN PUBLIC HEALTH ASSOCIATION,
PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY AND ANDREW WHEELER, ADMINISTRATOR,
RESPONDENTS

AEP GENERATING COMPANY, ET AL.,
INTERVENORS

Consolidated with 19-1165, 19-1166, 19-1173, 19-1175, 19-1176, 19-1177, 19-1179, 19-1185, 19-1186, 19-1187, 19-1188

On Petitions for Review of a Final Action of the Environmental Protection Agency

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Steven C. Wu, Deputy Solicitor General, Office of the Attorney General for the State of New York, argued the cause for the State and Municipal petitioners and intervenor Nevada.

With him on the briefs were *Letitia James*, Attorney General, *Barbara D. Underwood*, Solicitor General, *Matthew W. Grieco*, Assistant Solicitor General, *Michael J. Myers*, Senior Counsel, *Andrew G. Frank*, Assistant Attorney General of Counsel, *Xavier Becerra*, Attorney General, Office of the Attorney General for the State of California, *Robert W. Byrne*, Senior Assistant Attorney General, *David A. Zonana*, Supervising Deputy Attorney General, *Jonathan A. Wiener*, *M. Elaine Meckenstock*, *Timothy E. Sullivan*, *Elizabeth B. Rumsey*, and *Theodore A.B. McCombs*, Deputy Attorneys General, *William Tong*, Attorney General, Office of the Attorney General for the State of Connecticut, *Matthew I. Levine* and *Scott N. Koschwitz*, Assistant Attorneys General, *Kathleen Jennings*, Attorney General, Office of the Attorney General for the State of Delaware, *Valerie S. Edge*, Deputy Attorney General, *Philip J. Weiser*, Attorney General, Office of the Attorney General for the State of Colorado, *Eric R. Olson*, Solicitor General, *Robyn L. Wille*, Senior Assistant Attorney General, *Clare E. Connors*, Attorney General, Office of the Attorney General for the State of Hawaii, *William F. Cooper*, Deputy Attorney General, *Aaron M. Frey*, Attorney General, Office of the Attorney General for the State of Maine, *Laura E. Jensen*, Assistant Attorney General, *Brian E. Frosh*, Attorney General, Office of the Attorney General for the State of Maryland, *John B. Howard, Jr.*, *Joshua M. Segal*, and *Steven J. Goldstein*, Special Assistant Attorneys General, *Maura Healey*, Attorney General, Office of the Attorney General for the Commonwealth of Massachusetts, *Melissa A. Hoffer* and *Christophe Courchesne*, Assistant Attorneys General, *Megan M. Herzog* and *David S. Frankel*, Special Assistant Attorneys General, *Dana Nessel*, Attorney General, Office of the Attorney General for the State of Michigan, *Gillian E. Wener*, Assistant Attorney General, *Keith Ellison*, Attorney General, Office of the Attorney General for the State of Minnesota, *Peter N. Surdo*, Special Assistant Attorney

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Counsel, *Barbara D. Underwood*, Solicitor General, *Steven C. Wu*, Deputy Solicitor General, *Matthew W. Grieco*, Assistant Solicitor General, *Xavier Becerra*, Attorney General, Office of the Attorney General for the State of California, *Robert W. Byrne*, Senior Assistant Attorney General, *David A. Zonana*, Supervising Deputy Attorney General, *Jonathan A. Wiener*, *M. Elaine Meckenstock*, *Timothy E. Sullivan*, *Elizabeth B. Rumsey*, and *Theodore A.B. McCombs*, Deputy Attorneys General, *William Tong*, Attorney General, Office of the Attorney General for the State of Connecticut, *Matthew I. Levine* and *Scott N. Koschwitz*, Assistant Attorneys General, *Kathleen Jennings*, Attorney General, Office of the Attorney General for the State of Delaware, *Valerie S. Edge*, Deputy Attorney General, *Philip J. Weiser*, Attorney General, Office of the Attorney General for the State of Colorado, *Eric R. Olson*, Solicitor General, *Robyn L. Wille*, Senior Assistant Attorney General, *Clare E. Connors*, Attorney General, Office of the Attorney General for the State of Hawaii, *William F. Cooper*, Deputy Attorney General, *Aaron M. Frey*, Attorney General, Office of the Attorney General for the State of Maine, *Laura E. Jensen*, Assistant Attorney General, *Brian E. Frosh*, Attorney General, Office of the Attorney General for the State of Maryland, *John B. Howard, Jr.*, *Joshua M. Segal*, and *Steven J. Goldstein*, Special Assistant Attorneys General, *Maura Healey*, Attorney General, Office of the Attorney General for the Commonwealth of Massachusetts, *Melissa A. Hoffer* and *Christophe Courchesne*, Assistant Attorneys General, *Megan M. Herzog* and *David S. Frankel*, Special Assistant Attorneys General, *Dana Nessel*, Attorney General, Office of the Attorney General for the State of Michigan, *Gillian E. Wener*, Assistant Attorney General, *Keith Ellison*, Attorney General, Office of the Attorney General for the State of Minnesota, *Peter N. Surdo*, Special Assistant Attorney General, *Aaron D. Ford*, Attorney General, Office of the Attorney General for the State of Nevada, *Heidi Parry Stern*, Solicitor General, *Gurbir*

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Attorney for the City and County of Denver, *Lindsay S. Carder* and *Edward J. Gorman*, Assistant City Attorneys, *Michael N. Feuer*, City Attorney, Office of the City Attorney for the City of Los Angeles, *Michael J. Bostrom*, Assistant City Attorney, *James E. Johnson*, Corporation Counsel, New York City Law Department, *Christopher G. King*, Senior Counsel, *Marcel S. Pratt*, City Solicitor, City of Philadelphia Law Department, *Scott J. Schwarz* and *Patrick K. O'Neill*, Divisional Deputy City Solicitors, and *Thomas F. Pepe*, City Attorney, City of South Miami were on the brief for the State and Municipal Intervenors in support of respondents. *Jeremiah Langston*, Assistant Attorney General, Office of the Attorney General for the State of Montana, *Stephen C. Meredith*, Solicitor, Office of the Attorney General for the Commonwealth of Kentucky, *Margaret I. Olson*, Assistant Attorney General, Office of the Attorney General for the State of North Dakota, and *Erik E. Petersen*, Assistant Attorney General, Office of the Attorney General for the State of Wyoming, and *Robert A. Wolf* entered appearances.

Patrick Morrisey, Attorney General, Office of the Attorney General for the State of West Virginia, *Lindsay S. See*, Solicitor General, *Thomas T. Lampman*, Assistant Solicitor General, *Scott A. Keller*, *Jeffrey H. Wood*, *Jeremy Evan Maltz*, *Steven P. Lehotsky*, *Michael B. Schon*, *Thomas A. Lorenzen*, *Elizabeth B. Dawson*, *Rae Cronmiller*, *Steve Marshall*, Attorney General, Office of the Attorney General for the State of Alabama, *Edmund G. LaCour, Jr.*, Solicitor General, *Kevin G. Clarkson*, Attorney General, Office of the Attorney General for the State of Alaska at the time the brief was filed, *Clyde Sniffen, Jr.*, Attorney General, *Leslie Rutledge*, Attorney General, Office of the Attorney General for the State of Arkansas, *Nicholas J. Bronni*, Solicitor General, *Vincent M. Wagner*, Deputy Solicitor General, *Dylan L. Jacobs*, Assistant Solicitor General, *Christopher M. Carr*, Attorney General,

Office of the Attorney General for the State of Georgia, *Andrew A. Pinson*, Solicitor General, *Derek Schmidt*, Attorney General, Office of the Attorney General for the State of Kansas, *Jeffrey A. Chanay*, Chief Deputy Attorney General, *Curtis T. Hill, Jr.*, Attorney General, Office of the Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, *Andrew Beshear*, Governor, Office of the Governor for the Commonwealth of Kentucky, *S. Travis Mayo*, Chief Deputy General Counsel, *Taylor Payne*, Deputy General Counsel, *Joseph A. Newberg*, Deputy General Counsel and Deputy Executive Director, *Jeff Landry*, Attorney General, Office of the Attorney General for the State of Louisiana, *Elizabeth B. Murrill*, Solicitor General, *Harry J. Vorhoff*, Assistant Attorney General, *Eric S. Schmitt*, Attorney General, Office of the Attorney General for the State of Missouri, *D. John Sauer*, Solicitor General, *Julie Marie Blake*, Deputy Solicitor General, *Timothy C. Fox*, Attorney General at the time the brief was filed, Office of the Attorney General for the State of Montana, *Matthew T. Cochenour*, Deputy Solicitor General, *Wayne Stenehjem*, Attorney General, Office of the Attorney General for the State of North Dakota, *Paul M. Seby*, Special Assistant Attorney General, *Douglas J. Peterson*, Attorney General, Office of the Attorney General for the State of Nebraska, *Justin D. Lavene*, Assistant Attorney General, *Dave Yost*, Attorney General, Office of the Attorney General of the State of Ohio, *Benjamin M. Flowers*, Solicitor General, *Cameron F. Simmons*, Principal Assistant Attorney General, *Mike Hunter*, Attorney General, Office of the Attorney General for the State of Oklahoma, *Mithun Mansinghani*, Solicitor General, *Jason R. Ravnsborg*, Attorney General, Office of the Attorney General for the State of South Dakota, *Steven R. Blair*, Assistant Attorney General, *Alan Wilson*, Attorney General, Office of the Attorney General for the State of South Carolina, *James Emory Smith, Jr.*, Deputy Solicitor General, *Ken Paxton*, Attorney General, Office of the Attorney General for

the State of Texas, *Kyle D. Hawkins*, Solicitor General, *Sean Reyes*, Attorney General, Office of the Attorney General for the State of Utah, *Tyler R. Green*, Solicitor General, *Bridget Hill*, Attorney General, Office of the Attorney General for the State of Wyoming, *James Kaste*, Deputy Attorney General, *Todd E. Palmer*, *William D. Booth*, *Obianuju Okasi*, *Carroll W. McGuffey, III*, *Misha Tseytlin*, *C. Grady Moore, III*, *Julia Barber*, *F. William Brownell*, *Elbert Lin*, *Allison D. Wood*, *Emily Church Schilling*, *Kristina R. Van Bockern*, *David M. Flannery*, *Kathy G. Beckett*, *Edward L. Kropp*, *Amy M. Smith*, *Janet J. Henry*, *Melissa Horne*, *Angela Jean Levin*, *Eugene M. Trisko*, *John A. Rego*, *Reed W. Sirak*, *Michael A. Zody*, *Jacob Santini*, *Robert D. Cheren*, *Mark W. DeLaquil*, and *Andrew M. Grossman* were on the brief for State and Industry Intervenors in support of respondents regarding Clean Power Plan Repeal.

Wayne Stenehjem, Attorney General, Office of the Attorney General for the State of North Dakota, and *Paul M. Seby*, Special Assistant Attorney General, were on the brief for intervenor State of North Dakota in support of the respondents. *Jerry Stouck* entered an appearance.

Thomas J. Ward, *Megan H. Berge*, and *Jared R. Wigginton* were on the brief for *amicus curiae* National Association of Builders in support of respondents.

Before: MILLETT, PILLARD, and WALKER, *Circuit Judges*.

Opinion for the Court filed PER CURIAM.

Opinion concurring in part, concurring in the judgment in part, and dissenting in part filed by *Circuit Judge* WALKER.

TABLE OF CONTENTS

I. Background 17
A. The Clean Air Act 17
B. Electricity and Climate Change 21
1. Electricity 21
2. Climate Change and the Federal Government 24
C. The Clean Power Plan 29
D. The ACE Rule 32
1. Repeal of the Clean Power Plan 32
2. Best System of Emission Reduction 33
3. Degree of Emission Limitation Achievable 36
4. Implementing Regulations 38
E. Petitions for Review 38
F. Jurisdiction and Standard of Review 39
II. Section 7411 40
A. Statutory Context 40
1. Text 46
2. Statutory History, Structure, and Purpose 59
3. Compliance Measures 71
B. The Major Questions Doctrine 74
1. The EPA's Regulatory Mandate 75
2. Best System of Emission Reduction 80
C. Federalism 92
III. The EPA's Authority to Regulate Carbon Dioxide Emissions Under Section 7411 98
A. The Coal Petitioners' Challenges 98
1. Endangerment Finding 99
2. Section 7411 and Section 7412's Parallel Operation 111
B. The Robinson Petitioners' Challenges 132
IV. Amendments to the Implementing Regulations 138
V. Vacatur and Remand 146
VI. Conclusion 147

As the Supreme Court recognized nearly fourteen years ago, climate change has been called "the most pressing environmental challenge of our time." *Massachusetts v. EPA*, 549 U.S. 497, 505 (2007) (formatting modified). Soon thereafter, the United States government determined that greenhouse gas emissions are polluting our atmosphere and causing significant and harmful effects on the human environment. Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act (2009 Endangerment Finding), 74 Fed. Reg. 66,496, 66,497–66,499 (Dec. 15, 2009). And both Republican and Democratic administrations have agreed: Power plants burning fossil fuels like coal "are far and away" the largest stationary source of greenhouse gases and, indeed, their role in greenhouse gas emissions "dwarf[s] other categories[.]" EPA Br. 169; *see also* Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (New Source Rule), 80 Fed. Reg. 64,510, 64,522 (Oct. 23, 2015) (fossil-fuel-fired power plants are "by far the largest emitters" of greenhouse gases).

The question in this case is whether the Environmental Protection Agency (EPA) acted lawfully in adopting the 2019 Affordable Clean Energy Rule (ACE Rule), 84 Fed. Reg. 32,520 (July 8, 2019), as a means of regulating power plants' emissions of greenhouse gases. It did not. Although the EPA has the legal authority to adopt rules regulating those emissions, the central operative terms of the ACE Rule and the repeal of its predecessor rule, the Clean Power Plan, 80 Fed. Reg. 64,662 (Oct. 23, 2015), hinged on a fundamental misconstruction of Section 7411(d) of the Clean Air Act. In addition, the ACE Rule's amendment of the regulatory framework to slow the process for reduction of emissions is arbitrary and capricious. For those reasons, the ACE Rule is

vacated, and the record is remanded to the EPA for further proceedings consistent with this opinion.

I. BACKGROUND

A. THE CLEAN AIR ACT

In 1963, Congress passed the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population[,]" *id.* § 7401(b)(1). Animating the Act was Congress' finding that "growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles[] has resulted in mounting dangers to the public health and welfare[.]" *Id.* § 7401(a)(2).

Section 111 of the Clean Air Act, which was added in 1970 and codified at 42 U.S.C. § 7411, directs the EPA to regulate any new and existing stationary sources of air pollutants that "cause[], or contribute[] significantly to, air pollution" and that "may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7411(b)(1)(A); *see id.* § 7411(d), (f) (providing that the EPA Administrator "shall" regulate existing and new sources of air pollution). A "stationary source" is a source of air pollution that cannot move, such as a power plant. *See id.* § 7411(a)(3) (defining "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant[]"). An example of a common non-stationary source of air pollution is a gas-powered motor vehicle. *See Utility Air Regulatory Group v. EPA* (*UARG*), 573 U.S. 302, 308 (2014).

Within 90 days of the enactment of Section 7411, the EPA Administrator was to promulgate a list of stationary source categories that "cause[], or contribute[] significantly to, air

pollution[.]" 42 U.S.C. § 7411(b)(1)(A). In 1971, the Administrator included fossil-fuel-fired steam-generating power plants on that list. Air Pollution Prevention and Control: List of Categories of Stationary Sources, 36 Fed. Reg. 5,931 (March 31, 1971); *see also* New Source Rule, 80 Fed. Reg. at 64,527–64,528. Today's power plants fall in that same category. ACE Rule, 84 Fed. Reg. at 32,557 n.250.

Once a stationary source category is listed, the Administrator must promulgate federal "standards of performance" for all newly constructed sources in the category. 42 U.S.C. § 7411(b)(1)(B). The Act defines a "standard of performance" as

> a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Id. § 7411(a)(1).

Once such a new source regulation is promulgated, the Administrator also must issue emission guidelines for already-existing stationary sources within that same source category. 42 U.S.C. § 7411(d)(1)(A)(ii); *see also American Elec. Power Co., Inc. v. Connecticut* (*AEP*), 564 U.S. 410, 424 (2011).

While the new source standards are promulgated and enforced entirely by the EPA, the Clean Air Act prescribes a process of cooperative federalism for the regulation of existing sources. Under that structure, the statute delineates three distinct regulatory steps involving three sets of actors—the

EPA, the States, and regulated industry—each of which has a flexible role in choosing how to comply. *See* 42 U.S.C. § 7411(a)(1), (d). This allows each State to work with the stationary sources within its jurisdiction to devise a plan for meeting the federally promulgated quantitative guideline for emissions. *See id.* § 7411(d).

The process starts with the EPA first applying its expertise to determine "the degree of emission limitation achievable through the application of the best system of emission reduction" that "has been adequately demonstrated." 42 U.S.C. § 7411(a)(1); *see* 40 C.F.R. § 60.22a. That system must "tak[e] into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements[.]" 42 U.S.C. § 7411(a)(1). Once the Administrator identifies the best system of emission reduction, she then determines the amount of emission reduction that existing sources should be able to achieve based on the application of that system and adopts corresponding emission guidelines. *Id.*; *see also, e.g.*, ACE Rule, 84 Fed. Reg. at 32,523; Clean Power Plan, 80 Fed. Reg. at 64,719.

Each State then submits to the EPA a plan that (i) establishes standards of performance for that State's existing stationary sources' air pollutants (excepting pollutants already subject to separate federal emissions standards), and (ii) "provides for the implementation and enforcement of such standards of performance[]" by the State. 42 U.S.C. § 7411(d)(1); *see* 40 C.F.R. § 60.23a. The standards of performance must "reflect[]" the emission targets that the EPA has determined are achievable. 42 U.S.C. § 7411(a)(1). In this context, a state standard need not adopt the best system identified by the EPA to "reflect[]" it. *Id.*; *see* 40 C.F.R. § 60.24a(c). Instead, the Clean Air Act affords States significant flexibility in designing and enforcing standards that

employ other approaches so long as they meet the emission guidelines prescribed by the Agency.

If a State fails to submit a satisfactory plan, the EPA may prescribe a plan for that State. 42 U.S.C. § 7411(d)(2)(A); *see* 40 C.F.R. § 60.27a(c)-(e). Similarly, if the State submits a plan but fails to enforce it, the EPA itself may enforce the plan's terms. *Id.* § 7411(d)(2)(B).

The third and final set of relevant actors are the regulated entities themselves, to which, under the Act, the States may afford leeway in crafting compliance measures. *See* Clean Power Plan, 80 Fed. Reg. at 64,666; ACE Rule, 84 Fed. Reg. at 32,555.

The EPA has exercised its authority under Section 7411 over the years to set emission limitations for different types of air pollution from various categories of existing sources. *See* 42 Fed. Reg. 12,022 (March 1, 1977) (fluorides from phosphate fertilizer plants); 42 Fed. Reg. 55,796 (Oct. 18, 1977) (acid mist from sulfuric acid plants); 44 Fed. Reg. 29,828 (May 22, 1979) (total reduced sulfur from kraft pulp plants); 45 Fed. Reg. 26,294 (April 17, 1980) (fluorides from primary aluminum plants); 60 Fed. Reg. 65,387 (Dec. 19, 1995) (various pollutants from municipal waste combustors); 61 Fed. Reg. 9905 (March 12, 1996) (landfill gases from municipal solid waste landfills); 70 Fed. Reg. 28,606 (May 18, 2005) (mercury from coal-fired power plants).

The Clean Air Act is a comprehensive statute that includes a variety of regulatory programs for tackling air pollution in addition to Section 7411. Regulated parties may be subject to one or more programs. As relevant here, the National Ambient Air Quality Standards (NAAQS) provisions, 42 U.S.C. §§ 7408–7410, govern the levels of specified air pollutants that may be present in the atmosphere to protect air quality and the

public health and welfare. The Hazardous Air Pollutants program, *id.* § 7412, directs the EPA to establish strict emission limitations for the most dangerous air pollutants emitted from major sources. Section 7411's cooperative federalism program for existing sources operates as a gap-filler, requiring the EPA to regulate harmful emissions not controlled under those other two programs. *Id.* § 7411(d)(1)(i).

B. ELECTRICITY AND CLIMATE CHANGE

1. Electricity

Electricity powers the world. Chances are that you are reading this opinion on a device that consumes electricity. Yet two distinct characteristics of electricity make its production and delivery in the massive quantities demanded by consumers an exceptionally complex process. First, unlike most products, electricity is a perfectly fungible commodity. Grid Experts Amicus Br. 6. A watt of electricity is a watt of electricity, no matter who makes it, how they make it, or where it is purchased. Second, at least as of now, this highly demanded product cannot be effectively stored at scale after it is created. Paul L. Joskow, *Creating a Smarter U.S. Electricity Grid*, 26 J. ECON. PERSP. 29, 31–33 (2012).[1] Instead, electricity must

[1] Change in storage capacity is picking up speed. *See generally* Richard L. Revesz & Burcin Unel, *Managing the Future of the Electricity Grid: Energy Storage and Greenhouse Gas Emissions*, 42 HARV. ENV'T L. REV. 139, 140–141 (2018) (describing ongoing declines in cost of storage); LAZARD, LAZARD'S LEVELIZED COST OF STORAGE ANALYSIS—VERSION 6.0 (2020) (noting "storage costs have declined across most use cases and technologies, particularly for shorter-duration applications, in part driven by evolving preferences in the industry"). Nevertheless, the grid's production capacity still far exceeds its present storage capacity. Univ. of Mich.

constantly be produced, and is almost instantaneously consumed. *See* Clean Power Plan, 80 Fed. Reg. at 64,677, 64,692; Grid Experts Amicus Br. 8.

Those unique attributes led to the creation of the American electrical grid.[2] The grid has been called the "supreme engineering achievement of the 20th century," MASS. INST. OF TECH., THE FUTURE OF THE ELECTRIC GRID 1 (2011) (formatting modified), and it is an exceptionally complex, interconnected system. "[A]ny electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving[.]" *New York v. FERC*, 535 U.S. 1, 7 (2002). That means that units of electricity as delivered to the user are identical, no matter their source. On the grid, there is no coal-generated electricity or renewable-generated electricity; there is just electricity. *See* Clean Power Plan, 80 Fed. Reg. at 64,692; Grid Experts Amicus Br. 7–8. Also, because storing electricity for any length of time remains technically challenging and often costly, the components of the grid must operate as a perfectly calibrated machine to deliver the amount of electricity that all consumers across the United States need at the moment they need it. Grid Experts Amicus

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Ctr. for Sustainable Sys., U.S. GRID ENERGY STORAGE (Sept. 2020), http://css.umich.edu/sites/default/files/US%20Grid%20Energy%20Storage_CSS15-17_e2020.pdf (last visited Jan. 11, 2021) (United States has 1,100 gigawatts of installed generation capacity and just 23 gigawatts of storage capacity).

[2] Technically, "grids." There are three regional grids in the contiguous United States: Eastern, Western, and Texas. Grid Experts Amicus Br. 9; *see also* United States Dep't of Energy, *North American Electric Reliability Corporation Interconnections*, https://www.energy.gov/oe/downloads/north-american-electric-reliability-corporation-interconnections (last visited Jan. 11, 2021).

Br. 8, 10–11; *see also* 80 Fed. Reg. at 64,677. "If [someone] in Atlanta on the Georgia [leg of the] system turns on a light, every generator on Florida's system almost instantly is caused to produce some quantity of additional electric energy which serves to maintain the balance in the interconnected system[.]" *Federal Power Comm'n v. Florida Power & Light Co.*, 404 U.S. 453, 460 (1972) (citation omitted). "Like orchestra conductors signaling entrances and cut-offs, grid operators use automated systems to signal particular generators to dispatch more or less power to the grid as needed over the course of the day, thus ensuring that power pooled on the grid rises and falls to meet changing demand." Grid Experts Amicus Br. 11.

Most generators of electricity on the American grid create power by burning fossil fuels like coal, oil, and natural gas. *See* United States Energy Information Administration (EIA), *Frequently Asked Questions: What Is U.S. Electricity Generation by Energy Source?* (Nov. 2, 2020), https://www.eia.gov/tools/faqs/faq.php?id=427&t=3 (last visited Jan. 11, 2021) (fossil fuels represented 62.6 percent of electricity generation in 2019). Some of those power plants take a fossil fuel (usually coal) and burn it in a water boiler to make steam. Other power plants take a different fossil fuel (usually natural gas), mix it with highly compressed air, and ignite it to release a combination of super-hot gases. Either way, that steam or superheated mixture is piped into giant turbines that catch the gases and rotate at extreme speeds. Those turbines turn generators, which spin magnets within wire coils to produce electricity. EIA, *Electricity Explained* (Nov. 9, 2020), https://www.eia.gov/energyexplained/electricity/how-electricity-is-generated.php (last visited Jan 11, 2021).

2. Climate Change and the Federal Government

Electrical power has become virtually as indispensable to modern life as air itself. But electricity generation has come into conflict with air quality in ways that threaten human health and well-being when power generated by burning fossil fuels emits carbon dioxide and other polluting greenhouse gases into the air.

Since the late 1970s, the federal government has focused "serious attention" on the effects of carbon dioxide pollution on the climate. *Massachusetts v. EPA*, 549 U.S. at 507. In 1978, Congress adopted the National Climate Program Act, Pub. L. No. 95-367, 92 Stat. 601, which directed the President to study and devise an appropriate response to "man-induced climate processes and their implications[,]" *id.* § 3; *see Massachusetts v. EPA*, 549 U.S. at 507–508. In response, the National Academy of Sciences' National Research Council reported "no reason to doubt that climate changes will result" if "carbon dioxide continues to increase," and "[a] wait-and-see policy may mean waiting until it is too late." *Massachusetts v. EPA*, 549 U.S. at 508 (quoting CLIMATE RESEARCH BOARD, CARBON DIOXIDE & CLIMATE: A SCIENTIFIC ASSESSMENT, at viii (1979)).

In 1987, Congress passed the Global Climate Protection Act, which found that "manmade pollution[,]" including "the release of carbon dioxide, * * * may be producing a long-term and substantial increase in the average temperature on Earth[.]" Pub. L. No. 100-204, Title XI, §1102(1), 101 Stat. 1407, 1408 (codified at 15 U.S.C. § 2901 note). The Climate Protection Act directed the EPA to formulate a "coordinated national policy on global climate change." *Id.* § 1103(b), 101 Stat. at 1408; *see Massachusetts v. EPA*, 549 U.S. at 508.

It was not until the Supreme Court's 2007 decision in *Massachusetts v. EPA*, however, that the Court confirmed that carbon dioxide and other greenhouse gas emissions constituted "air pollutant[s]" covered by the Clean Air Act. *See* 549 U.S. at 528. The Supreme Court explained that the Clean Air Act's "sweeping definition of 'air pollutant' includes '*any* air pollution agent or combination of such agents, including *any* physical, chemical . . . substance or matter which is emitted into or otherwise enters the ambient air[.]'" *Id.* at 528–529 (quoting 42 U.S.C. § 7602(g)). The Act, the Supreme Court held, "is unambiguous" in that regard. *Id.* at 529. "On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word 'any.'" *Id.* And "[c]arbon dioxide" and other common greenhouse gases are "without a doubt" chemical substances that are "emitted into . . . the ambient air." *Id.* (quoting 42 U.S.C. § 7602(g)).

Given that statutory command, the Supreme Court ruled that the EPA "can avoid taking further action" to regulate such pollution "only if it determines that greenhouse gases do not contribute to climate change" or offers some reasonable explanation for not resolving that question. *Massachusetts v. EPA*, 549 U.S. at 533.

Taking up the mantle, the EPA in 2009 found "compelling[]" evidence that emissions of greenhouse gases are polluting the atmosphere and are endangering human health and welfare by causing significant damage to the environment. 2009 Endangerment Finding, 74 Fed. Reg. at 66,497; *see id.* ("[T]he Administrator finds that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare. * * * The Administrator has determined that the body of scientific evidence compellingly supports this finding."); *id.* at 66,497–

66,499. The EPA concluded that "'compelling' evidence supported the 'attribution of observed climate change to anthropogenic' [that is, human-influenced] emissions of greenhouse gases[.]" *AEP*, 564 U.S. at 417 (quoting 74 Fed. Reg. at 66,518). The "[c]onsequent dangers of greenhouse gas emissions," the EPA determined, include

> increases in heat-related deaths; coastal inundation and erosion caused by melting icecaps and rising sea levels; more frequent and intense hurricanes, floods, and other "extreme weather events" that cause death and destroy infrastructure; drought due to reductions in mountain snowpack and shifting precipitation patterns; destruction of ecosystems supporting animals and plants; and potentially "significant disruptions" of food production.

Id. (quoting 74 Fed. Reg. at 66,524–66,535).

Not long thereafter, the Supreme Court ruled that the significant greenhouse gas pollution caused by fossil-fuel-fired power plants is subject to regulation under Section 7411 of the Clean Air Act. *AEP*, 564 U.S. at 424 (holding that Section 7411 "speaks directly to emissions of carbon dioxide from [fossil-fuel-fired] plants[]") (internal quotation marks omitted). The Court concluded that the EPA's expertise made it "best suited to serve as primary regulator of greenhouse gas emissions." *Id.* at 428.

In 2015, with the 2009 carbon dioxide endangerment finding continuing in effect, the EPA reaffirmed that greenhouse gases "endanger public health, now and in the future." New Source Rule, 80 Fed. Reg. at 64,518. The EPA explained that, "[b]y raising average temperatures, climate change increases the likelihood of heat waves, which are associated with increased deaths and illnesses[,]" particularly

among "[c]hildren, the elderly, and the poor[.]" *Id.* at 64,517. In addition, the EPA found that "[c]limate change impacts touch nearly every aspect of public welfare." *Id.* Among the "multiple threats caused by human emissions of [greenhouse gases]," the EPA pointed to climate changes that "are expected to place large areas of the country at serious risk of reduced water supplies, increased water pollution, and increased occurrence of extreme events such as floods and droughts." *Id.* The EPA "emphasize[d] the urgency of reducing [greenhouse gas] emissions due to * * * projections that show [greenhouse gas] concentrations climbing to ever-increasing levels in the absence of mitigation[,]" citing independent assessments finding that, "without a reduction in emissions, CO_2 concentrations by the end of the century would increase to levels that the Earth has not experienced for more than 30 million years." *Id.* at 64,518.

The federal government's consistent recognition of the danger to public health and welfare caused by climate change, and the signal contribution of greenhouse gas emissions from power plants to global warming, continues to the present. In 2018, President Trump's administration concluded that "Earth's climate is now changing faster than at any point in the history of modern civilization, primarily as a result of human activities." U.S. GLOBAL CHANGE RESEARCH PROGRAM, FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II: IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES (REPORT-IN-BRIEF) 24 (2018). The administration added that "the evidence of human-caused climate change is overwhelming and continues to strengthen," and "the impacts of climate change are intensifying across the country[.]" *Id.* at 26 (emphasis omitted). "Climate-related changes in weather patterns and associated changes in air, water, food, and the environment are affecting the health and well-being of the American people, causing injuries, illnesses, and death." *Id.* at

102. The administration's report concluded that urgent action is needed to mitigate these dangers because "[f]uture risks from climate change depend primarily on decisions made today." *Id.* at 13.

In preparing the ACE Rule, the EPA expressly acknowledged its continued adherence to the 2015 endangerment finding. 84 Fed. Reg. at 32,533 (The 2015 New Source Rule "continues to provide the requisite predicate for applicability of [Clean Air Act] section 111(d)."); *id.* at 32,557 n.250; *see also* Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program: Proposed Rule, 83 Fed. Reg. 44,746, 44,751 (Aug. 31, 2018) (confirming that the 2015 New Source Rule "remains on the books[]"); EPA Br. 217.

That endangerment finding provided the essential factual foundation—and triggered a statutory mandate—for the EPA to regulate greenhouse gas emissions from both new and existing power plants. *See* New Source Rule, 80 Fed. Reg. at 64,527, 64,529–64,532; Clean Power Plan, 80 Fed. Reg. at 64,683–64,690; *see also* 42 U.S.C. §§ 7411(b)(1)(A)–(B) (duty to regulate new stationary sources that contribute significantly to dangerous pollution identified in endangerment finding), 7411(d)(1)(A)(ii) (duty to regulate existing stationary sources that would be regulated under § 7411(b) if they were new stationary sources). Recall, Section 7411(b)(1)(A) provides that the EPA Administrator "shall" regulate any category of sources that, "in his judgment * * * causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA endangerment findings reflect such well-established risks.

C. THE CLEAN POWER PLAN

In the last decade, the EPA has heavily focused its regulation of greenhouse gases on the power sector because "power plants are far and away the largest stationary-category source of greenhouse gases[,]" and "power plants' contributions to CO_2 pollution * * * dwarf[] other categories[.]" EPA Br. 169.

In October 2015, the EPA issued greenhouse gas emission standards for new and modified power plants. *See* New Source Rule, 80 Fed. Reg. at 64,510. In so doing, the EPA found that, "[a]ll told, these fossil fuel-fired [power plants] emit almost one-third of all U.S. [greenhouse gas] emissions, and are responsible for almost three times as much as the emissions from the next ten stationary source categories combined." *Id.* at 64,531. That rule and finding remain in effect and are not challenged in this litigation.

The EPA then turned to the regulation of existing power plants. The EPA began, as the Clean Air Act requires, by determining the best system of emission reduction that has been adequately demonstrated for existing fossil-fuel-fired power plants. *See* 42 U.S.C. § 7411(a)(1); Clean Power Plan, 80 Fed. Reg. at 64,718. In identifying that system, the EPA chose to build on the established grid system and methods of operation already adopted by and familiar to the power sector. *See* 80 Fed. Reg. at 64,725, 64,727–64,728. The regulations and standards that the EPA formulated came to be known as the Clean Power Plan. *Id.* at 64,663.

In the Clean Power Plan, the EPA determined that a combination of three existing methods of emission reduction—which the Plan referred to as building blocks, 80 Fed. Reg. at 64,667—formed the "best system of emission reduction," 42 U.S.C. § 7411(a)(1).

First, the system incorporated heat-rate improvements—that is, technological measures that improve efficiency at coal-fired steam power plants and, in that way, reduce the amount of coal that must be burned to produce each watt of electricity to the grid. 80 Fed. Reg. at 64,667.

Second, the system added the "substitut[ion of] increased generation from lower-emitting existing natural gas combined cycle units for generation from higher-emitting affected steam generating" power plants, which are mostly coal-fired. 80 Fed. Reg. at 64,667.

Third, the system prioritized the use of electricity generated from zero-emitting renewable-energy sources over electricity from the heavily greenhouse-gas-polluting fossil-fuel-fired power plants. 80 Fed. Reg. at 64,667.

Those second and third methods of emission control are often referred to as "generation shifting" because the reductions occur when the source of power generation shifts from higher-emission power plants to less-polluting sources of energy. *See* Clean Power Plan, 80 Fed. Reg. at 64,728–64,729. As the EPA observed, such shifts in generation already occur all the time as a matter of grid mechanics. That is, within the grid's "Constrained Least-Cost Dispatch" system, production from "generators with the lowest variable costs" will be dispatched "first, as system operational limits allow, until all demand is satisfied." Grid Experts Amicus Br. 12. "[R]enewable energy generators typically receive dispatch priority because they have lower variable costs than fossil-fuel-fired generators, which must purchase fuel." *Id.* at 13 (citing 80 Fed. Reg. at 64,693). The EPA found that most electricity is generated by diversified utilities that could achieve most or all of the shift to lower- or no-emission generation by

reassessing the dispatch priority of their own assets. *See* 80 Fed. Reg. at 64,796, 64,804.

As required by Section 7411(a)(1), the EPA then quantified the degree of emission reduction achievable under that three-tier best system for the relevant fossil-fuel-fired power plants and translated it into state-specific emissions goals for 2030. Clean Power Plan, 80 Fed. Reg. at 64,824–64,825. To permit additional flexibility, the Plan actually provided two alternative types of targets: rate-based goals, reflecting the rate of emission per certain amount of generation, and mass-based goals, reflecting the total emission from a State's sources. *Id.* at 64,820, 64,824–64,825 Tables 12, 13. The alternative metrics were an added source of flexibility for States in choosing how they would meet the federal limits.

Under the Clean Air Act, States could then propose plans that set standards of performance for their existing power plants that would meet those emission goals. Clean Power Plan, 80 Fed. Reg. at 64,664. In doing so, the States and their power plants were under no obligation to use the three specific methods that the EPA had identified in determining the best system of emission reduction. Rather, consistent with Section 7411(d)'s cooperative federalism approach, States were free to choose any measures, approaches, or technologies that they deemed appropriate to meet the federal guidelines. For example, they could adopt technological controls already in use by some power plants like carbon capture and sequestration (by which carbon dioxide is captured from the plant's flue gas before it is emitted and then securely stored so it cannot reach the atmosphere) or co-firing (where fuels that release less carbon dioxide are burned alongside fuels that release more to reduce the amount of the latter used). *See id.* at 64,883. The EPA also suggested that States might rely on emissions-trading

programs (often referred to as cap-and-trade) and other potential compliance strategies. *Id.* at 64,887.

The EPA found that its proposed approach was "consistent with, and in some ways mirrors, the interconnected, interdependent and highly regulated nature of the utility power sector[]" and its grid, as well as "the daily operation of affected [power plants] within this framework, and the critical role of utilities in providing reliable, affordable electricity at all times and in all places within this complex, regulated system." Clean Power Plan, 80 Fed. Reg. at 64,678.

The Clean Power Plan was challenged in this court. *West Virginia* v. *EPA,* No. 15-1363 (and consolidated cases) (D.C. Cir. Oct. 23, 2015). After we heard argument *en banc*, but before we issued a decision, that litigation was held in abeyance and ultimately dismissed as the EPA reassessed its position. No. 15-1363, Docs. 1673071, 1806952.

D. THE ACE RULE

In 2019, the EPA issued a new rule that repealed and replaced the Clean Power Plan: The Affordable Clean Energy (ACE) Rule. *See* Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 Fed. Reg. 32,520 (July 8, 2019). That Rule is the subject of this litigation.

1. Repeal of the Clean Power Plan

At the outset, the ACE Rule repealed the Clean Power Plan. The EPA explained that it felt itself statutorily compelled to do so because, in its view, "the plain meaning" of Section 7411(d) "unambiguously" limits the best system of emission reduction to only those measures "that can be put into operation

at a building, structure, facility, or installation." ACE Rule, 84 Fed. Reg. at 32,523–32,524. Because the Clean Power Plan's best system was determined by using some emission control measures that the EPA characterized as physically operating off the site of coal-fired power plants—such as some forms of generation shifting and emissions trading—the EPA concluded that it had no choice but to repeal the Plan. *Id.* The EPA emphasized "that [its] action is based on the only permissible reading of the statute and [it] would reach that conclusion even without consideration of the major question doctrine," while adding that application of that latter doctrine "confirms the unambiguously expressed intent" of Section 7411. *Id.* at 32,529.

2. Best System of Emission Reduction

Considering its authority under Section 7411 to be confined to physical changes to the power plants themselves, the EPA's ACE Rule determined a new best system of emission reduction for coal-fired power plants only. The EPA left unaddressed in this rulemaking (or elsewhere) greenhouse gas emissions from other types of fossil-fuel-fired power plants, such as those fired by natural gas or oil. ACE Rule, 84 Fed. Reg. at 32,533.

The EPA's proposed system relied solely on heat-rate improvement technologies and practices that could be applied at and to existing coal-fired power plants. ACE Rule, 84 Fed. Reg. at 32,525, 32,537. The EPA selected only seven heat-rate improvement techniques as components of its best system. *Id.* at 32,537. Six of those measures were new-to-the-plant technologies or "equipment upgrades." *Id.* at 32,536–32,537 (naming as part of the best system (1) adding or upgrading neural networks and intelligent sootblowers; (2) upgrading boiler feed pumps; (3) replacing or upgrading air heater and

duct leakage control devices; (4) adding variable frequency drives in feed pumps and induced-draft fans; (5) blade path upgrades; and (6) redesigning or replacing economizers). The seventh measure was the use of "best operating and maintenance practices" implementing heat-rate improvement techniques. *Id.* at 32,537, 32,540. The EPA limited itself to techniques that could be "applied broadly" to the Nation's coal-fired plants, which primarily amounted to upgrades to existing equipment. *Id.* at 32,536.

The EPA explained that only five of the seven listed techniques directly reduce the heat rate of power plants. *See* ACE Rule, 84 Fed. Reg. at 32,538–32,540. The other two techniques—replacing or upgrading the boiler feed pump and installing variable frequency drives—serve to reduce the amount of energy that a power plant must use to run its own general operations. *Id.* at 32,538–32,539.[3] So those two techniques do not make a power plant more efficient in turning coal into power, but instead allow power plants to dispatch more of the power they produce to the grid rather than using it internally. *Id.*

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[3] The boiler feed pump is a device that is used to pump water into the boiler. 84 Fed. Reg. at 32,538. It consumes a "large fraction" of the power used to run the plant. *Id.* Because the boiler feed pump requires so much energy, the EPA suggested that "maintenance on these pumps should be rigorous to ensure both reliability and high-efficiency operation." *Id.* Variable frequency drives "enable[] very precise and accurate speed control" of both boiler feed pumps and "induced draft (ID) fans," which "maintain proper flue gas flow through downstream air pollutant control equipment[.]" *Id.* at 32,539. This precise control would reduce the excess use of fans and pumps, requiring less energy. *See id.*

The EPA identified two of its other chosen techniques—blade path and economizer upgrades—as the measures that, of all the considered technologies, were "expected to offer some of the largest [heat-rate] improvements." ACE Rule, 84 Fed. Reg. at 32,537 (showing table predicting highest heat-rate improvement range in economizer redesign or replacements and blade path upgrades).[4]

But the EPA then stated that it expected some power plants would not adopt those two technologies because their use could trigger additional regulation that the companies would find burdensome. 84 Fed. Reg. at 32,537 ("[B]ased on public comments * * *, [blade path upgrades and economizer redesign or replacement] are [heat-rate improvement] technologies that have the most potential to trigger [New Source Review] requirements."). In fact, the EPA did not model those two techniques in its regulatory impact analysis precisely because it was unlikely that they would be adopted. J.A. 1656–1657.

Finally, the EPA acknowledged that the proposed technologies could create a "rebound effect." ACE Rule, 84 Fed. Reg. at 32,542. A rebound effect means that net carbon dioxide emissions actually *increase* as a result of the efficiency improvements made by power plants. *Id.* This happens because, as the efficiency upgrades make coal-based energy cheaper to produce, coal-fired power plants will have an incentive to run more often, thereby increasing their overall emissions. *Id.* The EPA found that risk of increased emissions irrelevant because its best system of emission reduction "is aimed at improving a source's emissions *rate* performance at

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[4] "Blade path upgrades" consist of upgrades to the steam turbine. Economizers are heat-exchange devices that "capture waste heat from boiler flue gas" and use that captured heat to help heat the boiler feedwater. *Id.* at 32,540.

the unit-level," rather than reducing the overall volume of emissions by individual sources. *Id.* at 32,543.

In choosing its seven proposed power-plant-based heat-rate improvement technologies, the EPA excluded from its best system several other suggested methods of reducing emissions, including (1) natural gas co-firing, repowering, and refueling; (2) biomass co-firing; and (3) carbon capture and storage technologies. ACE Rule, 84 Fed. Reg. at 32,543–32,547. The EPA rejected biomass co-firing primarily because "any potential net reductions in emissions from biomass use occur outside of the regulated source," and so do not fall within the EPA's reading of Section 7411(d) as confined to emission limits imposed at and to individual plants. *Id.* at 32,546. The EPA excluded natural gas co-firing and carbon capture and storage from its own best system, citing cost, geographical, and operational concerns. *Id.* at 32,544–32,545, 32,547–32,548. The EPA provided that sources could choose to use natural gas co-firing or carbon capture—but not biomass co-firing—to meet state-established standards of performance. *Id.* at 32,555.

3. Degree of Emission Limitation Achievable

Having determined its best system of emission reduction, the EPA then purported to prescribe the "degree of emission limitation achievable," which States could use to create their own standards of performance. 42 U.S.C. § 7411(a)(1). What the EPA produced as its emission guidelines was a chart that prescribed heat-rate improvement "ranges" for each of the EPA's chosen heat-rate improvement technologies, organized by power plants of differing sizes. ACE Rule, 84 Fed. Reg. at 32,537. The ranges show how much heat-rate improvement can be "expected" from use of each of the identified technologies. *Id.*

The EPA was explicit, though, that the "potential" range of heat-rate reduction was only illustrative and that the actual reduction for each of the EPA's chosen technologies would be "unit-specific" and would "depend upon a range of unit-specific factors." ACE Rule, 84 Fed. Reg. at 32,537–32,538. In that way, the ACE Rule made States responsible for evaluating "[heat-rate improvement] potential, technical feasibility, and applicability for each of the [best system of emission reduction] candidate technologies" on a power-plant–by–power-plant basis. *Id.* at 32,538. The ACE Rule expressly left States free to establish their own standards of performance for their power plants that "reflect a value of [heat-rate improvement] that falls *outside*" the ranges provided in the EPA's chart. *Id.* (emphasis added). In other words, the minimums listed in the EPA's emission-reduction chart were only suggestions.

The EPA explained that its non-mandatory ranges of efficiency reduction were valid because the applicability of the heat-rate improvement techniques to different plants and the effectiveness of each power plant's existing technology may vary. *See* ACE Rule, 84 Fed. Reg. at 32,538 (stating that "not all" of the technologies would be "applicable or warranted at the level of a particular facility due to source-specific factors such as the site-specific operational and maintenance history, the design and configuration, [or] the expected operating plans").

The EPA predicted that its ACE Rule would reduce carbon dioxide emissions by less than 1% from baseline emission projections by 2035. J.A. 1651. That calculation did not reflect emission *increases* that could result from the rebound effect.

4. Implementing Regulations

The ACE Rule included some new regulations under Section 7411(d). ACE Rule, 84 Fed. Reg. at 32,575-32,584 (codified at 40 C.F.R. pt. 60, subpart Ba). As relevant here, the regulations significantly extend the States' deadlines for the development and submittal of their plans for emission reduction from nine months to three years. *See* 40 C.F.R. § 60.23a(a)(1). Similarly, the new regulations extend the EPA's deadline to act on those plans from four months to one year. 40 C.F.R. § 60.27a(b). The new regulations also extend the EPA's deadline to substitute its own plan for a non-compliant State's plan from six months after the submission deadline to two years after a finding that the plan was incomplete, disapproved, or unsubmitted. *See* 40 C.F.R. § 60.27a(c). Finally, the requirement that States demonstrate compliance progress is now triggered only where a State's compliance schedule stretches more than two years from when its plan was originally due, as opposed to the one-year period in the prior regulations. *See* 40 C.F.R. § 60.24a(d).

E. Petitions for Review

Twelve petitions for review of the ACE Rule were timely filed in this court and consolidated in this case. Nos. 19-1140 (lead case), 19-1165, 19-1166, 19-1173, 19-1175, 19-1176, 19-1177, 19-1179, 19-1185, 19-1186, 19-1187, 19-1188. The petitioners fall into three groups.

The first grouping consists of petitioners who seek review of the ACE Rule's conclusion that Section 7411 only permits emission reduction measures that can be implemented at and applied to the source. Those petitioners include (i) a coalition of State and municipal governments; (ii) power utilities;

(iii) trade associations from the renewable energy industry; and (iv) several public health and environmental advocacy groups.[5]

The second grouping is petitioners who challenge the ACE Rule's imposition of any emission limits as unlawful because, in their view, (i) the EPA failed to make a specific endangerment finding for carbon dioxide emitted from existing power plants; (ii) the EPA's regulation of mercury emissions from coal-fired power plants under Section 7412 precludes the regulation of greenhouse gas emissions under Section 7411; and (iii) the EPA should have regulated carbon dioxide from stationary sources, including power plants, under the NAAQS program, 42 U.S.C. §§ 7408–7410.

The third petitioner group is the Biogenic CO_2 Coalition. They object only to the ACE Rule's determination that States may not count biomass co-firing as a method of complying with numerical emission limits.

F. Jurisdiction and Standard of Review

This court has jurisdiction to review these petitions under the Clean Air Act. 42 U.S.C. § 7607(b)(1); *see also Sierra Club v. EPA*, 955 F.3d 56, 61 (D.C. Cir. 2020).

We may set aside the ACE Rule if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 42 U.S.C. § 7607(d)(1)(C), (d)(9)(A); *see also Maryland v. EPA*, 958 F.3d 1185, 1196 (D.C. Cir. 2020) ("[W]e apply the same standard of review under the Clean Air Act as we do under the Administrative

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[5] The public health and environmental advocacy groups also challenge the third prong of the ACE Rule—the new implementing regulations—as arbitrary and capricious.

Procedure Act.") (quoting *Allied Local & Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 68 (D.C. Cir. 2000)).

II. SECTION 7411

A. STATUTORY CONTEXT

In enacting the Clean Air Act, "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants." *American Elec. Power Co. v. Connecticut* (*AEP*), 564 U.S. 410, 426 (2011). As the Supreme Court has observed, 42 U.S.C. § 7411 "speaks directly to" and outlines the framework for that regulation. *Id.* at 424 (internal quotation marks omitted). Specifically, Section 7411 marks out a pair of distinct regulatory tracks for stationary sources of air pollutants. *See* 42 U.S.C. § 7411(a)(2), (6). The first track applies to new sources, *id.* § 7411(b), and the second to existing sources, *id.* § 7411(d). The statute calls for federal-state cooperation in regulating existing sources, affording distinct roles to the federal and state agencies in arriving at what Section 7411 calls "standards of performance" for the emission of air pollutants. *Id.* § 7411(a)(1), (c), (d)(1).

The regulatory regimes for new and existing sources differ in the process by which such standards are established—and the roles played by the respective regulatory actors. The Act assigns the EPA the main regulatory role in specifying the new-source pollution controls: After the EPA determines that a particular "category of sources * * * causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare," it publishes regulations establishing standards of performance for new sources in that category. *Id.* § 7411(b)(1).

The process for regulating existing sources—which raise distinct concerns about sunk costs and the health and

environmental effects of older processes—involves more actors and steps. Regulation of a given category of existing sources is triggered by the same EPA air-pollution determination as for new sources. But for existing sources the Act adopts a cooperative-federalism approach that leaves the States discretion in determining how their State and industry can best meet quantitative emissions guidelines established by the EPA. *See AEP*, 564 U.S. at 424. Under Section 7411(d), the EPA and the States thus have distinct but complementary roles subject to different procedures and limitations. *See* 42 U.S.C. § 7411 (a)(1), (d)(1). This case concerns the mechanics of that cooperative framework for existing sources and, specifically, restrictions the Agency now claims the statute imposes on regulation of the air pollutants those sources emit.

Two provisions of Section 7411 shape the existing-source framework. Subsection (a)(1) defines a standard of performance, by reference to the "degree of emission limitation" that the EPA determines is "achievable," as:

> a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

42 U.S.C. § 7411(a)(1).

Subsection (d)(1), in turn, requires the Secretary to set up a system by which willing States can submit to the EPA "a plan which [] establishes standards of performance for any existing source." *Id.* § 7411(d)(1). Only "where [a] State fails to submit a satisfactory plan" may the EPA step in and directly

promulgate standards of performance for existing sources. *Id.* § 7411(d)(2).

Putting these two provisions together results in what are best understood as three distinct steps involving three sets of actors, each exercising a degree of leeway in choice of control measures. *See* ACE Rule, 84 Fed. Reg. at 32,533, 32,549–32,550; Clean Power Plan, 80 Fed. Reg. at 64,665–64,666.

First, under subsection (a)(1), the EPA determines the "best system of emission reduction" that is "adequately demonstrated," taking into consideration certain enumerated statutory criteria: cost, any nonair quality health and environmental impacts, and energy requirements. 42 U.S.C. § 7411(a)(1). The Agency then issues emission guidelines that quantify the "degree of emission limitation achievable through the application of the best system" it has identified. *Id.*; 40 C.F.R. § 60.22a; *see AEP*, 564 U.S. at 424; EPA Br. 21–22; ACE Rule, 84 Fed. Reg. at 32,523, 32,551.

Second, under subsection (d)(1), States issue standards of performance for existing sources that comply with the EPA's emission guidelines and "reflect" the achievable degree of emission limitation set in those guidelines. *AEP*, 564 U.S. at 424; 42 U.S.C. § 7411(d)(1); 40 C.F.R. § 60.23a; *see also* Clean Power Plan, 80 Fed. Reg. at 64,666. That the standards must "reflect" the emission guidelines does not mean that they must embody the methods EPA contemplated in identifying the best system; rather, the States have flexibility in determining the specifics of the standards they issue so long as they accomplish the "degree of emission limitation" the EPA calculated based on its "best system."

Third, the operators of regulated stationary sources implement measures to ensure they will in practice comply with the standards of performance their state agency has

established for them. *See* ACE Rule, 84 Fed. Reg. at 32,555. States often grant regulated entities some discretion in how they meet those standards. *See, e.g.*, N.Y. COMP. CODES R. & REGS. Tit. 6 § 201-6.4(f) (2013) (describing the "operational flexibility" afforded to Title V facility owners in New York State to "propose a range of operating conditions that will allow flexibility [for a facility] to operate under more than one operating scenario").

The issue before us arises at the first step—the EPA's determination of the best system of emission reduction. In the Clean Power Plan, the Agency determined that the best system was one that both improved the heat rate at power plants and prioritized generation from lower-emitting plants ahead of high-emitting plants. Clean Power Plan, 80 Fed. Reg. at 64,707. The EPA then calculated specific emission reductions achievable through application of that best system that it published as emission guidelines for States. *Id.* Had the Clean Power Plan gone into effect, States would then have submitted to the EPA plans based on the Agency's guidelines that established standards of performance for sources in their jurisdictions, as provided for in subsection (d)(1). The Clean Power Plan left States flexibility in the measures they included in their plans, so long as they achieved a reduction in emissions at least as great as that achieved by EPA-established quantitative guidelines. *See, e.g.*, *id.* at 64,665, 64,756–64,757, 64,734–64,737, 64,832–64,837. And it further allowed States, at their option, to give leeway to sources to select alternate compliance measures to make the requisite reductions. *See id.* at 64,834–64,835.

Based on what it now perceives to be an express and unambiguous textual limitation in Section 7411 that it says the Clean Power Plan overlooked, the EPA repealed that Plan and replaced it with the ACE Rule. The EPA's new reading of the

statute requires the Agency, in modeling its "best system of emission reduction," to consider only emission-reduction measures that "can be applied at and to a stationary source." ACE Rule, 84 Fed. Reg. at 32,534; *see also id.* at 32,526–32,532.

We address below the EPA's arguments regarding how the text and structure of Section 7411 purportedly support this limitation. That discussion is necessarily somewhat abstract and technical. So, for starters, it is worth bringing the matter more concretely into view.

Consider the effect the EPA's new statutory interpretation had on its resulting Rule. First, because generation shifting is not, in the EPA's view, a measure that can be applied "at and to" any one individual source, the ACE Rule limits the best system of emission reduction to heat-rate improvements alone. 84 Fed. Reg. at 32,534–32,535. Then, instead of publishing emission guidelines quantifying emission reductions achievable through application of the best system, the ACE Rule identifies what the Agency has determined are the most effective heat-rate technologies available and a potential range of heat-rate improvements achievable through application of each of those technologies. *Id.* 32,535–32,537.

As under the Clean Power Plan, the ACE Rule grants States flexibility in establishing standards of performance for sources pursuant to the Agency's emission guidelines. Unlike the Clean Power Plan, however, the ACE Rule does not require that the States reach any specified minimum emission reduction. Instead, States must merely "evaluate the applicability of each of the candidate technologies" to sources within their jurisdiction and report their conclusions back to the Agency. ACE Rule, 84 Fed. Reg. at 32,550, 32,538–32,561.

The Rule recites that regulated entities have "broad

discretion" in meeting state-established standards, ACE Rule, 84 Fed. Reg. at 32,555, yet at the same time the Rule deems impermissible any compliance measure that cannot be applied at and to the source, *id.* The ACE Rule thereby disqualifies compliance by, for example, burning biofuel, *id.* at 32,557–32,558, which emits recently captured carbon dioxide, in contrast to fossil fuels' release of carbon dioxide stored away millions of years ago. *See generally Center for Biological Diversity v. EPA*, 722 F.3d 401, 405–406 (D.C. Cir. 2013).

The question here is a relatively discrete one. We are not called upon to decide whether the approach of the ACE Rule is a permissible reading of the statute as a matter of agency discretion. Instead, the sole ground on which the EPA defends its abandonment of the Clean Power Plan in favor of the ACE Rule is that the text of Section 7411 is clear and unambiguous in constraining the EPA to use only improvements at and to existing sources in its best system of emission reduction.

The EPA contends that its current interpretation is "the only permissible interpretation of the scope of the EPA's authority." ACE Rule, 84 Fed. Reg. at 32,535. Our task is to assess whether Section 7411 in fact compels the EPA's new interpretation. And because "deference to an agency's interpretation of a statute is not appropriate when the agency wrongly believes that interpretation is compelled by Congress," *Peter Pan Bus Lines, Inc. v. Fed. Motor Carrier Safety Admin.*, 471 F.3d 1350, 1354 (D.C. Cir. 2006) (quoting *PDK Labs., Inc. v. DEA*, 362 F.3d 786, 798 (D.C. Cir. 2004) (internal quotation marks omitted)), we may not defer to the EPA's reading if it is but one of several permissible interpretations of the statutory language, *see Negusie v. Holder*, 555 U.S. 511, 521 (2009). That is, the "regulation must be declared invalid, even though the agency might be able to adopt the regulation in the exercise of its discretion, if it 'was not

based on the agency's own judgment but rather on the unjustified assumption that it was Congress' judgment that such a regulation is desirable" or required. *Prill v. NLRB*, 755 F.2d 941, 948 (D.C. Cir. 1985) (quoting *FCC v. RCA Commc'ns*, 346 U.S. 86, 96 (1953) (formatting modified)); *accord Arizona v. Thompson*, 281 F.3d 248, 259 (D.C. Cir. 2002) (quoting *Prill*, 755 F.2d at 948).

For the reasons explained below, Section 7411 does not, as the EPA claims, constrain the Agency to identifying a best system of emission reduction consisting only of controls "that can be applied at and to a stationary source." ACE Rule, 84 Fed. Reg. at 32,534. The EPA here "failed to rely on its own judgment and expertise, and instead based its decision on an erroneous view of the law." *Prill*, 755 F.2d at 956. We accordingly must vacate and remand to the Agency "to interpret the statutory language anew." *Peter Pan Bus Lines*, 471 F.3d at 1354.

1. Text

As just noted, Section 7411 contemplates distinct roles for the EPA and the States in regulating existing stationary sources. *See* 42 U.S.C. § 7411(a)(1) (granting authority to the EPA to designate the best system and determine achievable degree of emissions reduction); *id.* § 7411(d)(1) (outlining the States' role in setting standards of performance for their sources). Nevertheless, the EPA now contends that language in Section 7411(a)(1) and (d)(1) "unambiguously limits the [best system of emission reduction] to those systems that can be put into operation *at* a building, structure, facility, or installation." ACE Rule, 84 Fed. Reg. at 32,524 (emphasis in original); *see id.* at 32,528; EPA Br. 70.

In the Agency's current view, the only pollution-control methods the Administrator can consider in selecting the "best

system of emission reduction" within the meaning of Section 7411(a) are add-ons or retrofits confined to the level of the individual fossil-fuel-fired power plant. ACE Rule, 84 Fed. Reg. at 32,524. That is so even though the record before the EPA shows that generation shifting to prioritize use of the cleanest sources of power is one of the most cost-effective means of reducing emissions that plants have already adopted and that have been demonstrated to work, and that generation shifting is capable of achieving far more emission reduction than controls physically confined to the source. *See, e.g.*, Clean Power Plan, 80 Fed. Reg. at 64,693, 64,728–64,729; 2 J.A. 598; Grid Experts Amicus Br. 13–16. In other words, the EPA reads the statute to require the Agency to turn its back on major elements of the systems that the power sector is actually and successfully using to efficiently and cost-effectively achieve the greatest emission reductions. *See* Grid Experts Amicus Br. 22 (observing that the ACE Rule "imposes greater abatement costs on industry than other approaches would to achieve the same effect").

The Clean Power Plan could not stand, the EPA now concludes, because its consideration of generation shifting exceeded the Agency's narrow authority under Section 7411's plain text. ACE Rule, 84 Fed. Reg. at 32,526–32,527. In promulgating the Clean Power Plan, the EPA read "system of emission reduction" to mean "a set of measures that work together to reduce emissions and that are implementable by the sources themselves." Clean Power Plan, 80 Fed. Reg. at 64,762. And it concluded that both heat-rate improvements and generation shifting "are components of a best system of emission reduction for the affected [electricity generating units] because they entail actions that the affected [units] may themselves undertake that have the effect of reducing their emissions." *Id.* at 64,709 (internal quotation marks omitted).

All of that is wrong, the EPA has since decided. "[T]he Agency now recognizes that Congress 'spoke to the precise question' of the scope of [42 U.S.C. § 7411](a)(1) and clearly precluded the unsupportable reading of that provision asserted in the [Clean Power Plan]." ACE Rule, 84 Fed. Reg. at 32,527. The EPA insists that its current reading is mandated by the statutory text.

It is the EPA's current position that is wrong. Nothing in Section 7411(a)(1) itself dictates the "at and to the source" constraint on permissible ingredients of a "best system" that the Agency now endorses. For the EPA to prevail, its reading must be required by the statutory text. *Peter Pan Bus Lines*, 471 F.3d at 1354. It fails for at least three reasons, any of which is alone fatal.

First, the plain language of Section 7411(a)(1), the root of the EPA's authority to determine the best system, announces its own limitations. Those limitations simply do not include the source-specific caveat that the EPA now interposes and casts as unambiguous.

Second, there is no basis—grammatical, contextual, or otherwise—for the EPA's assertion that the source-specific language of subsection (d)(1) must be read upstream into subsection (a)(1) to equate the EPA's "application of the best system" with the controls States eventually will apply "at and to" an individual source. As the EPA at times acknowledges, the two subsections address distinct steps in the regulatory process, one focused on the EPA's role and the other focused on the States'. Any question as to which limitations pertain to each regulatory actor cannot reasonably be said to have been resolved by Congress in favor of the unambiguous meaning the EPA now advocates.

Third, even if subsections (a)(1) and (d)(1) were read

together in the way the EPA proposes, they would not confine the EPA to designating a best system consisting of at-the-source controls. The EPA's entire theory hinges on the Agency's unexplained replacement of the preposition "for" in "standards of performance for any existing source" with the prepositions "at" and "to." Yet the statutory text calls for standards of performance "for" existing sources. Emission-reduction measures "for" sources may readily be understood to go beyond those that apply physically "at" and "to" the individual source. Emissions trading, for example, might be a way "for" a source to meet a standard of performance.

The shortcomings of its statutory interpretation are more than enough to doom the Agency's claim that Section 7411 announces an unambiguous limit on the best system of emission reduction. The issue is not whether the EPA's counterarguments to each of these points might show its interpretation to be permissible as an exercise of discretion. Again, the EPA has not claimed to be exercising any such discretion here. It insists instead that the unambiguous terms of the statute tie its hands.

After reviewing what Section 7411 clearly says about the nature and limits of the "best system of emission reduction" that Congress called on the EPA to determine, we take up each of the EPA's arguments to show why Section 7411 does not unambiguously support its at-the-source restriction.

a. Section 7411(a) Defines the Best System

The EPA acknowledges, as it must, that Section 7411(a) is the source of the EPA's authority and responsibility to determine the best system of emission reduction for existing sources and set corresponding emission guidelines. *See, e.g.*, ACE Rule, 84 Fed Reg. at 32,534. Indeed, that is the only subsection in which the term "best system of emission

reduction" appears. But the EPA offers no reading of subsection (a)(1) itself.

Section 7411(a)(1) expresses Congress' expectation that the EPA will study all "adequately demonstrated" means of emission reduction. And it directs the EPA to draw on "adequately demonstrated" methods to determine the "best" system to reduce emissions. Congress imposed no limits on the types of measures the EPA may consider beyond three additional criteria: cost, any nonair quality health and environmental impacts, and energy requirements. 42 U.S.C. § 7411(a)(1). Congress largely called on the expert judgment of the EPA to determine for a particular source category and pollutant which already-demonstrated methods compose the "best system."

Because it did not set out separate definitions for either "system" or "best," those words take their ordinary meanings. *See Sandifer v. United States Steel Corp.*, 571 U.S. 220, 227 (2014). Webster's Dictionary offers a representative definition of "system" contemporaneous with the Act's adoption: "[A] complex unity formed of many often diverse parts subject to a common plan or serving a common purpose." *System*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 2322 (2d ed. 1968). The superlative "best" as applied to a "system of emission reduction" plainly places a high priority on efficiently and effectively reducing emissions. *See Best*, Merriam-Webster, https://www.merriam-webster.com/dictionary/best (last visited Jan. 11, 2021) ("excelling all others," "offering or producing the greatest advantage, utility, or satisfaction").

The ordinary meanings of these terms "reflect[] an intentional effort to confer the flexibility necessary" for effective regulation appropriate to the context. *Massachusetts*

v. EPA, 549 U.S. 497, 532 (2007). As the Supreme Court has acknowledged, "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred." *Whitman v. American Trucking Ass'n*, 531 U.S. 457, 475 (2001); *see Gaughf Props., L.P. v. Commissioner*, 738 F.3d 415, 424–425 (D.C. Cir. 2013); *Sabre, Inc. v. Department of Transp.*, 429 F.3d 1113, 1122, 1124–1125 (D.C. Cir. 2005). Congress in Section 7411 deliberately charged the EPA with identifying the best system of emission reduction to keep pace with escalating threats to air quality, and, within expressed limits, empowered it to make the judgments how best to do so.

The Agency simply ignores how the statutory text defines the "best system of emission reduction," asserting instead that definitional language does not confer regulatory authority. *See, e.g.*, EPA Br. 58–59 ("[I]t is not Section 7411(a) ('Definitions') that grants the agency authority to act."). Section 7411(a)(1)'s designation as a definitional provision deprives it of standalone meaning, the EPA contends. The EPA instead reads it as "subsidiary" to Section 7411(d), regarding state standards of performance for existing sources. EPA Br. 58. But Congress does indeed use definitional provisions to confer regulatory authority. *See, e.g.*, *Weinberger v. Bentex Pharm, Inc.*, 412 U.S. 645, 652–653 (1973) (holding that the statutory definition of "new drug" confers authority upon the FDA). That is precisely what it did in Section 7411(a)(1). *See Sierra Club v. Costle*, 657 F.2d 298, 321 (D.C. Cir. 1981) (describing Section 7411(a)(1) as authorizing the EPA to determine the best system of emission reduction and regulate accordingly); 40 C.F.R. 60.22a.

The EPA offers no support—apart from its own new-found version of "statutory interpretation 101," EPA Br. 65—for ignoring how the Act itself defines and limits the "best

system" determination. Nor does it offer any sound justification for importing language from a different provision governing States' "standards of performance." The EPA's "at and to the source" limitation on "best system" finds no footing in the text of Section 7411(a)(1).

b. Section 7411(d)(1) Does Not Change the Definition

Even taking the EPA's argument on its own terms does not work because Section 7411(d)(1)'s text and statutory context get it no further. To support its narrow reading of the EPA's authority to determine the "best system," the Agency focuses on the phrase "through the application of" in Section 7411(a)(1). That provision defines a "standard of performance" as an emission standard that "reflects the degree of emission limitation achievable through the application of the best system of emission reduction[.]" The EPA says the "application" phrase "requires both a direct object and an indirect object." ACE Rule, 84 Fed. Reg. at 32,524; *accord* EPA Br. 66–68. And, it continues, Congress cannot have meant to leave its indirect object undefined. The EPA says that, grammatically speaking, someone must apply something (the direct object) to something else (the indirect object). EPA Br. 115–116, 118–119. It then picks its preferred, narrow indirect object from a different statutory subsection and casts that object as the only statutorily permissible choice. *See* 84 Fed Reg. at 32,524.

The EPA locates an indirect object in Section 7411(d). Unlike subsection (a)(1), subsection (d)—entitled "Standards of performance for existing sources"—explicates an indirect object. 42 U.S.C. § 7411(d). Borrowing from subsection (d), then, the EPA imports into subsection (a)(1) a limitation of the "best system of emission reduction" to measures that can be applied "to and at *an individual existing source*—i.e., any

building or facility subject to regulation." EPA Br. 58 (emphasis added); *see also* ACE Rule, 84 Fed. Reg. at 32,534.

But the language to which the EPA points supplies the indirect object only of "standards of performance" adopted by States pursuant to Section 7411(d)(1), not of the EPA's "best system of emission reduction" determined pursuant to Section 7411(a)(1). The latter phrase does not even appear in Section 7411(d)(1). To reach its preferred result, the Agency invokes surmise rather than statutory text. It insists that the limitations on States' standards of performance in Section 7411(d)(1)—the second step in the regulatory process—must be read upstream to limit the EPA's "best system of emission reduction" in subsection (a)(1). Nothing in the statute so requires.

In the text, States' standards of performance need only "reflect" the emission guidelines (or "degree of emission limitation achievable") the EPA calculates based on the "best system of emission reduction" it determines. As laid out in the statute and explained above, those state-developed "standards of performance" follow on but are legally and functionally distinct from the "best system" that the EPA develops. The EPA is simply wrong that the statute clearly and unambiguously requires that the unstated indirect object of "application of the best system of emission reduction" under Section 7411(a)(1) must be the same as the indirect object of States' standards of performance as stated in Section 7411(d)(1).

Neither does the grammatical rule the EPA invokes to bridge the gap between these subsections hold up. The crux of the EPA's textual argument is that "the verb 'to apply,' requires both a direct object and an indirect object." ACE Rule, 84 Fed. Reg. at 32,524; EPA Br. 66–68. The first obvious problem is

that, in the relevant passage of Section 7411(a)(1), Congress did not use the verb "apply," but rather the noun "application." The EPA acknowledges this distinction in passing in the ACE Rule, but dismisses it without discussion, offering only that "'application' is derived from the verb 'to apply[.]'" 84 Fed. Reg. at 32,524. That is, of course, true, as far as it goes. The phrase "application of the best system of emission reduction" is what is called a nominalization, a "result of forming a noun or noun phrase from a clause or a verb." *Nominalization*, Merriam-Webster Dictionary https://www.merriam-webster.com/dictionary/nominalization (last visited Jan. 11, 2021). Grammar assigns direct or indirect objects only to verbs—not nouns. No objects are needed to grammatically complete the actual statutory phrase. So much for the grammatical imperative.

Even if we were to take the EPA's leap to the verb "apply" from the noun "application" that actually appears in the statute, the Agency comes up short. The EPA is incorrect to insist that the verb "apply" requires an indirect object. There is nothing ungrammatical about the sentence "In its effort to reduce emissions, the EPA applied the best system of emission reduction." The verb "apply," like its nominalization, may properly be used in a sentence with or without an explicit indirect object. *See Apply*, THOMAS HERBST ET AL., A VALENCY DICTIONARY OF ENGLISH 41–42 (Ian F. Roe et al. eds., 2004) (listing examples of grammatically correct uses with and without direct and indirect objects).[6]

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[6] Take, for instance, the following sentences: "It appears to violate GATT regulations, but the rules for applying the regulations are vague and the Netherlands has so far escaped censure"; "This information may not apply in Scotland, which has a different legal system." *Apply*, THOMAS HERBST ET AL., A VALENCY DICTIONARY

The EPA's shift from nominalization to verb does not, in any event, accomplish much. Either way, the lack of an explicit indirect object in Section 7411(a)(1) does not require that one be borrowed from Section 7411(d)(1). Equally logical indirect objects include, for example, the entire category of stationary sources, or the air pollutant to be limited. In any event, the best system cannot reasonably be said to be unambiguously applicable only to the indirect object the EPA suggests.

The EPA faults the Clean Power Plan for reading "application of" to be functionally equivalent to "implementation of," because "implement" "does not require an indirect object." EPA Br. 73. But neither does "application." So "application" textually supports adoption of the Clean Power Plan just as well as "implementation." Again, so much for grammar mandating the EPA's result.

The argument fails either way, but the fact is that Congress used the nominalization "application of" the best system of emission reduction. A nominalization enables the drafter to leave certain information unspecified—namely, who is acting and where their action is directed. *See, e.g.*, George D. Gopen, *Who Done It? Controlling Agency in Legal Writing, Part II*, 39 LITIG. 12, 12–13 (Spring 2013) (describing how nominalizations create ambiguity). Legal writers, including Congress, employ nominalizations all the time. And they do so with the full awareness that their use preserves flexibility.

Congress reasonably built in leeway for the EPA to

OF ENGLISH 41–42 (examples from sections D1 and D5). Additional examples abound. *See, e.g.*, *Apply*, OXFORD ENGLISH DICTIONARY (3d ed. 2008) (def. I.9) ("Crest bought the firm[,] and, by applying its marketing and distribution muscle, has turned it into a $200 million category killer.").

exercise technical expertise in applying Section 7411, given the variety of pollution problems that it covers and the importance of allowing States maneuvering room under the cooperative federalism scheme. Congress may avoid specifying subjects, objects, or other grammatical information because a degree of adaptability suits the statutory role and purpose. One way Congress can denote that it has delegated to an agency's judgment the task of filling in the on-the-ground details of a statutorily defined program is by declining to dictate grammatically optional information, *see Lehrfeld v. Richardson*, 132 F.3d 1463, 1465–1466 (D.C. Cir. 1998); *Appalachian Power Co. v. EPA*, 135 F.3d 791, 808–810 (D.C. Cir. 1998), including an indirect object that the rules of grammar do not require be explicitly stated, *see, e.g.*, *Peter Pan Bus Lines*, 471 F.3d at 1353–1354.

Even if an implicit indirect object can be surmised, there is more than one plausible candidate here, and the statute does not unambiguously dictate the object. There certainly is no rule—grammatical or otherwise—that the specific indirect object must be the one to which the EPA now points. At the least, other contextually appropriate indirect objects of the "best system" include the source category or the emissions. The EPA has failed to establish that the sole and unambiguous indirect object must be the individual source. The EPA, of course, "may fill the gap[s] the Congress left," and any such "regulation is entitled to deference." *Gaughf Props.*, 738 F.3d at 424; *see also Appalachian Power*, 135 F.3d at 811–812. But in the ACE Rule and in its briefing here, the EPA has assiduously denied the existence of any gap at all. That was error.

c. EPA's Reading Itself Falls Short

The third and equally fatal flaw in the EPA's textual

analysis is its unexplained substitution of the prepositions "at" and "to" where the text it would have us borrow from subsection (d)(1) actually says "for" in referencing "standards of performance for any existing source." *See, e.g.*, ACE Rule, 84 Fed. Reg. at 32,534. As we do with any words enacted by Congress, we must give effect to the preposition it chose. *Cf. Telecommunications Res. & Action Ctr. v. FCC*, 801 F.2d 501, 517–518 (D.C. Cir. 1986) (finding decisive Congress' use of the preposition "under" instead of "by"). The word Congress actually used—"for" the source—lacks the site-specific connotation on which the EPA's case depends.

In its brief, the EPA presents the compound construction it says inexorably follows from reading text from subsection (a)(1) together with text from subsection (d)(1), and says it is restricted to determining a "best system of emission reduction *for* any building, structure, facility, or installation." EPA Br. 56 (formatting modified) (quoting 42 U.S.C. § 7411(a)(1), (a)(3), (a)(6), (d)(1)). The Agency then asserts that "the natural reading" of its proffered construction is that "the methods planned would be 'for' *and act at* the level of the singular, individual source." *Id.* at 62 (emphasis added).

In the preamble to the ACE Rule, the EPA went further, fully substituting the prepositions "at" and "to" in place of the preposition "for" that actually appears in the text the Agency says must be borrowed from subsection (d)(1). ACE Rule, 84 Fed. Reg. at 32,534. It relies on that further substitution to insist that the best system of emission reduction designated by the EPA must be limited to controls "that can be applied at and to," not "for," "a stationary source." *Id.*; *see also id.* at 32,524 ("at"); *id.* at 32,532, 32,534, 32,556 ("at and to"); *id.* at 32,555, 32,529 ("to and at"); *id.* at 32,543 ("at or to"); *id.* at 32,526 n.65 ("to or at"); EPA Br. 4, 58, 74. But nowhere in the ACE Rule does the EPA explain this swap of one preposition for two

meaningfully more restrictive ones. *See, e.g.*, 84 Fed. Reg. at 32,523–32,524, 32,534–32,535.

The EPA rewrites rather than reads the plain statutory text. Section 7411(a)(1), even if cross-referenced to subsection (d)(1) in the way the EPA says it must be, calls for the Agency to determine "the degree of emission limitation achievable through the application of the best system of emission reduction *for* any existing source"—not the application of the best system "at" and "to" such a source. And the word "for" lacks the physical on-site connotation that is so critical to the EPA's reading of the statutory text. Indeed, a standard of performance or system of emission reduction "for" a source just means that the system is "with regard or respect to" or "concerning" the source. *See For*, OXFORD ENGLISH DICTIONARY (2d ed. 1989) (def. 26). In contrast, "at" and "to" tend to connote direct physical proximity or contact. *See At*, OXFORD ENGLISH DICTIONARY (3d ed. 2008) (def. 1.a) ("usually determining a point or object with which a thing or attribute is practically in contact"); *To*, OXFORD ENGLISH DICTIONARY (3d. ed 2008) (def. 5.a) ("Into (or in) contact with; on, against"). A best system "for" a source thus might entail a broader array of controls that concern but are not immediately physically proximate to the source—such as, for instance, generation shifting.

* * *

In sum, the straitened vision of the EPA's best system that the Agency espies in Section 7411 is simply not supported by the text, let alone plainly and unambiguously required by it. The Act calls on the EPA to determine the degree of emission limitation achievable through "application of the best system of emission reduction" without specifying the system's indirect object, and uses the preposition "for" when it calls on the States

to develop "standards of performance for existing sources." 42 U.S.C. § 7411(a), (d). It simply does not unambiguously bar a system of emission reduction that includes generation shifting.

The EPA's position depends critically on words that are not there. It erroneously treats a nominalization of a verb as requiring an indirect object, collapses two separate functions and provisions of the Act in order to supply a borrowed indirect object, does so without any evidence that the borrowed indirect object was what Congress necessarily intended, and narrowly focuses the Agency's authority on that indirect object by using a different preposition from the one that actually appears in the borrowed text. Each of those interpretive moves was a misstep. Read faithfully, Section 7411(a)(1) lacks the straitjacket that the EPA imposes.

Policy priorities may change from one administration to the next, but statutory text changes only when it is amended. The EPA's tortured series of misreadings of Section 7411 cannot unambiguously foreclose the authority Congress conferred. The EPA has ample discretion in carrying out its mandate. But it may not shirk its responsibility by imagining new limitations that the plain language of the statute does not clearly require.

2. Statutory History, Structure, and Purpose

Even looking beyond the text does nothing to substantiate the EPA's proposed reading of Section 7411. *See Kiewit Power Constructors Co. v. Secretary of Labor*, 959 F.3d 381, 395 (D.C. Cir. 2020) (Henderson, J.) ("To discern the Congress's intent, we generally examine the statutory text, structure, purpose and its legislative history.") (quoting *Lindeen v. SEC*, 825 F.3d 646, 653 (D.C. Cir. 2016)). These other tools of statutory interpretation underscore the flexibility

of Section 7411(a)'s text, not the cabined reading the EPA proposes.

We begin by acknowledging Section 7411's role within the Clean Air Act. It is a catch-all, intended to ensure that the Act achieves comprehensive pollution control by guaranteeing that there are "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." S. REP. NO. 91-1196, at 20 (1970). In other words, Section 7411 is intended to reach pollutants that do not fit squarely within the ambit of the Act's other regulatory provisions. It authorizes regulation of pollutants not controlled by the other programs under the Act. The EPA does not contest that greenhouse gases emitted by powerplants fit that description.

The Agency points to statutory structure and history for evidence that Congress restricted the "best system of emission reduction" under Section 7411(a) to physical controls that are applied "at and to" an existing source. But the history and structure only confirm what the text shows: Nothing the EPA has identified suggests that Congress in Section 7411 meant to so constrict what might be part of a "best system of emission reduction."

The Congress that enacted Section 7411 was well aware that what a "best system" might comprise is necessarily dynamic and evolving. Congress' main limitation was that the "best system" selected by the EPA must be "adequately demonstrated." 42 U.S.C. § 7411(a)(1). And it stated three other key criteria—cost, nonair quality health and environmental impact, and energy requirements—as factors the EPA must take into account. *See id.* With those parameters in place, Congress largely left the identification of the best

system of emission reduction to the Agency's expert scientific judgment.

Consider cues from the Clean Air Act as a whole. In contrast to other systemic benchmarks in the Act, Section 7411(a)(1)'s prescription of the "best system of emission reduction" is striking for its paucity of restrictive language. References to more specific categories of emission-reduction tools appear elsewhere in the Act. A provision governing the Nitrogen Oxides Emissions Reduction Program, for example, directs the Administrator to establish limits based on the "degree of reduction achievable through the *retrofit application* of the best system of continuous emission reduction, taking into account *available technology*[.]" 42 U.S.C. § 7651f(b)(2) (emphasis added). The Act's regional haze program is likewise specific in its call for use of the "best available *retrofit technology*." *Id.* § 7491(b)(2)(A), (g)(2). The specificity of those other provisions highlights the comparative generality of Section 7411(a)'s reference to the "best system of emission reduction."

The sole provision the EPA highlights to shore up its at-the-source theory only further undermines it. The EPA points to the Act's Prevention of Significant Deterioration (PSD) program, 42 U.S.C. § 7475, and its requirement of controls at least as stringent as limits set under Section 7411, *see id.* § 7479(3), to argue that that "the interrelationship between the two types of standards"—the best system of emission reduction and the best available control technology—"is only intelligible if the standards are *in pari materia*." EPA Br. 85. But the distinct roles of the two provisions make clear that the limits in Section 7475 have no place in Section 7411(a)(1).

To qualify for a permit under the PSD program before a source may be built or modified, an applicant must affirm that

it will apply to each source the "best available control technology," or BACT, to limit its emissions. 42 U.S.C. § 7475(a)(4). The statute defines BACT as the degree of control that the permitting agency "determines is achievable for such [major emitting] facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques[.]" *Id.* § 7479(3). The statute further provides that BACT cannot "result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to [S]ection 7411 or 7412 of this title." *Id.* § 7479(3). The listed BACT options, EPA observes, are all physically applicable to the source unit. EPA Br. 85.

But the EPA ignores a critical detail: The BACT requirement applies only to newly constructed or modified sources. *See Alaska Dep't of Env't Conservation v. EPA*, 540 U.S. 461, 472 (2004) (describing 42 U.S.C. § 7475). Any standard established under Section 7411 and also "applicable," per the statutory cross-reference, to a facility regulated for prevention of significant deterioration under Section 7475 would be a standard for new or modified sources established pursuant to Section 7411(b). The BACT requirement does not apply to the existing sources covered by the provision at issue here, Section 7411(d). *See New York v. EPA*, 413 F.3d 3, 13 (D.C. Cir. 2005). Even if Section 7475 tracks Section 7411(b), there is simply no conflict between, on one hand, requiring new source construction to employ the newest and best at-the-source control technologies and, on the other, empowering the EPA to look to a wider range of ways to reduce emissions when it regulates older, existing sources.

The anomaly of looking to Section 7475(a)(4) to confine Section 7411 is highlighted by the fact that BACT permits are

required only in so-called "non-attainment" areas of the country. *See* 42 U.S.C. §§ 7407, 7472, 7474. We are unpersuaded that Congress buried a limit on the EPA's Section 7411 authority to address pollution from existing sources throughout the Nation by making reference to a floor for certain new facilities in certain parts of the country.

The statutory history of the BACT requirement further demonstrates that Congress did not intend that it weaken Section 7411(d). Sections 7475 and 7479 were enacted in the 1977 Clean Air Amendments, Pub. L. No. 95-95, §§ 165, 169, 91 Stat. 685, 735–742 (Aug. 7, 1977). In the very same legislation, Congress restricted the best system of emission reduction for *new* sources to technological methods while explicitly allowing the best system for *existing* sources to include non-technological methods. § 109(c)(1)(A), 91 Stat. at 700. If Congress wanted to confine Section 7411 to at-the-source technologies, it would have done so directly rather than hiding such a substantial limitation in an implicit inference from a more remote statutory provision.

The Clean Air Act's legislative history, including the history of the 1970 enactment of Section 7411 and the 1977 and 1990 amendments, further shows that Congress never imposed on the "best system of emissions reduction" the constraints the EPA now advocates. Before Congress settled on the best-system language it enacted in 1970, the Senate bill proposed to authorize the EPA to set standards for stationary sources "reflect[ing] the greatest degree of emission control" achievable through "the latest available control technology, processes, operating methods, or other alternatives." S. 4358, 91st Cong. § 6 (1970). The phrase "other alternatives" was understood to encompass "[t]he maximum use of available means of preventing and controlling air pollution"—without limitation to technological or at-the-source means. S. REP. NO.

91-1196, at 16. The Senate believed that was "essential" to limit emissions from both new and existing sources. *Id.* The House, for its part, proposed an initial version of Section 7411 that would have "require[d] new sources to 'prevent and control [their] emissions to the fullest extent compatible with the available technology and economic feasibility,'" H.R. 17255, 91st Cong. § 5 (1970), but included no provision regarding the regulation of existing sources.

As enacted, Section 7411 simply requires that the EPA identify as its benchmark for existing sources the "best system of emission reduction." 42 U.S.C. § 7411(a)(1). Nothing that the EPA identifies or that we discern in the relevant history shows the enacting Congress myopically "focused on steps that can be taken at and by individual sources to reduce emissions." EPA Br. 69. And of course, even if Congress at that time was only thinking of at-the-source controls, the EPA was well aware that environmental problems and their solutions rapidly evolve. At the end of the day, it is the statutory text that governs. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020).

Congress has consistently relied on the EPA's expert judgment in identifying the "best system" for existing sources. Its action in making, and then undoing, a limiting amendment to Section 7411's "best system of emission reduction" just for new and modified sources—not existing sources—underscores the point. First, Congress in 1977 amended the standard for new sources to require use of "the best technological system of continuous emission reduction," but did not make any parallel change to the standard for existing sources to add those "technological" and "continuous" limitations. Clean Air Amendments Act of 1977, Pub. L. No. 95-95, § 109(c)(1)(A), 91 Stat. 685; *see also id.* at 700 (adding Section 7411(a)(1)(C)). Then, in 1990, Congress again amended Section 7411, this time

to remove those additional limitations, reverting for new sources to the "best system of emission reduction" that had applied all along to existing sources. Clean Air Act Amendments of 1990, Pub. L. No. 101-549, § 403(a), 104 Stat. 2399, 2631 (1990).

The amendment and re-amendment of the new-source "best system" language emphasizes that Congress consistently avoided imposing any such technological, at-the-source limitation on the measures that EPA might include in the "best system" for reducing emissions from existing-source categories. And it shows that Congress had always understood the existing-source "best system" language to go beyond the technological restrictions that it briefly imposed on the parallel new source provision.

The ACE Rule is the first EPA rule to read the statute as so strictly boxing in the Agency. Although agency practice cannot directly show whether Congress had a specific intent on the matter in question, it is notable that the regulators closest to the issue never before saw what the EPA now insists is obvious on the face of Section 7411.

Over the last half century, no prior Administrator read the Act to foreclose from consideration in the "best system" all but at-the-source means of emission control. Rather, the EPA has exercised latitude to consider any adequately demonstrated approach to reducing harmful pollutants from existing source categories that it believed met the cost, grid-reliability and other statutory criteria. 42 U.S.C. § 7411(a)(1). Where the characteristics of the source category and the pollutant at issue point to emissions trading programs or production shifts from higher- to lower-emitting sources as components of the "best system," the EPA has in the past consistently concluded that it had the authority to consider them.

During the administration of President George W. Bush, for example, the EPA adopted the Clean Air Mercury Rule, 70 Fed. Reg. 28,606 (May 18, 2005), which included a mercury cap-and-trade program as a component of its best system of emissions reduction for existing coal-fired power plants, *see id.* at 28,619–28,620; *id.* at 28,617 ("EPA has determined that a cap-and-trade program based on control technology available in the relevant timeframe is the best system for reducing [mercury] emissions from existing coal-fired Utility Units.").[7]

The EPA's Clinton-era regulation of nitrogen oxide emissions from municipal solid waste combustors likewise relied on Section 7411(d), together with the EPA's waste-management authority under Section 7429, to authorize States to include emissions-trading programs in their State Plans. 40 C.F.R. § 60.33b(d)(2). Under state standards of performance designed to meet guidelines the EPA derived from its "best system," regulated entities were permitted to average the emission rates of multiple units within a single plant as well as trade emission credits with other plants. Municipal Waste Combustors Rule, 60 Fed. Reg. 65,387, 65,402 (Dec. 19, 1995).

The EPA's efforts to distinguish those other Section 7411(d)(1) programs do not work. The EPA claims that the Mercury Rule did not primarily rely on a cap-and-trade

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[7] We vacated the Mercury Rule for unlawfully delisting mercury-emitting electric utility steam generating units from the Section 7412 Hazardous Air Pollutants list. *See New Jersey v. EPA*, 517 F.3d 574, 582–584 (D.C. Cir. 2008). Because we held those mercury sources must be listed, and because Section 7411 cannot be used to regulate air pollutants listed under Section 7412, the existing-source rule the EPA had adopted under Section 7411(d) to control those same mercury emissions from power plants failed as well.

or dispatch shifting program, but rather that the best system rested on a "combination of a cap-and-trade mechanism and * * * the technology needed to achieve the chosen cap level." EPA Br. 72 n.20 (quoting ACE Rule, 84 Fed. Reg. at 32,526). To be clear, that sort of hybrid best system, involving both on-site and system-wide elements, is precisely what the EPA now insists is unprecedented and expressly barred by the statute's text.

Lest there be any doubt that the Mercury Rule's best system rested in significant part on the cap-and-trade mechanism, we note that the EPA in fact approved state implementation plans that adopted *none* of the on-site controls included in the best system and instead relied *entirely* on implementation of the best system's cap-and-trade program. *See, e.g.*, Notice of Intent, 32 La. Reg. 869, 870 (May 20, 2006) (proposing an implementation plan solely reliant on cap-and-trade); Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Louisiana, 72 Fed. Reg. 46,188, 46,188 (Aug. 17, 2007) (approving Louisiana's proposal on the basis that it "would meet [Clean Air Mercury Rule] requirements by participating in the EPA administered cap-and-trade program addressing [mercury] emissions"). Contrary to the EPA's assertions, *e.g.* EPA Br. 4, the Agency plainly has previously embraced beyond-the-source measures of emission reduction as authorized by the statutory text.

The EPA's invocation of its own past practice under Section 7411 falls wide of the mark. It errs in insisting that "the *more than seventy* Section 7411 rules" promulgated for "roughly forty-five years" somehow reflect a consistent adherence to the Agency's new view. EPA Br. 4, 88; *see id.* at 37–38, 88–89; ACE Rule, 84 Fed. Reg. at 32,526. Almost all of the rules to which it refers are irrelevant to the issue at hand. They were for new sources, subject to Section 7411(b), not

existing sources under Section 7411(d). *See* 84 Fed. Reg. at 32,526.

Older facilities that may be capable only of outdated, more polluting methods of generation present different regulatory challenges than new sources. As discussed above in connection with the EPA's reference to BACT requirements for new-source permitting under the PSD program, a requirement that owners and operators constructing new facilities apply state-of-the-art, lowest-emitting equipment and methods "at and to the source" might well be the best available means of reducing emissions for that source category. The same cannot be said for existing sources. A central error of the ACE Rule is that it fails to appreciate that difference. It identifies a handful of measures applicable to and at the source that the EPA suggests may achieve slight reductions. But industry practice demonstrates that better, lower-emitting, reliable, and cost-effective systems for reducing emissions from existing power plants typically also shift generation away from higher-emitting, fossil-fuel-fired capacity when renewable or lower- or zero-emitting generation is an available substitute.

Because the best, most efficient and effective systems for controlling emissions from existing sources ordinarily differ from the best systems for new sources, they are regulated via a distinct statutory track. Only the Section 7411(d) rules are relevant to the EPA's prior understanding of its authority to regulate existing sources. Those prior EPA rules contradict the EPA's position here. Before its about-face in the ACE Rule, all three of the Agency's most recent Section 7411(d) rules included emissions trading or generation shifting to lower-emitting sources. *See* Clean Power Plan, 80 Fed. Reg. at 64,755–64,756; Clean Air Mercury Rule, 70 Fed. Reg. at

28,606, 28,617, 28,619–28,620; Municipal Waste Combustors Rule, 60 Fed. Reg. 65,387, 65,402 (Dec. 19, 1995).

To put the EPA's mistaken reading of Section 7411 in perspective, consider how it effectively relegates federal regulators back to the sidelines where they stood before Congress overhauled the Clean Air Act in 1970. The federal government had until then done little more than provide information and guidance to cheer on States' air-quality regulators. *See Train v. NRDC*, 421 U.S. 60, 64 (1975) (noting that the States' response to earlier iterations of the Act focused on information and incentives had been "disappointing").

With the 1970 amendments, a virtually unanimous Congress dramatically strengthened the federal government's hand in combatting air pollution. *See Train*, 421 U.S. at 64 ("These Amendments sharply increased federal authority and responsibility. * * * The difference * * * was that the States were no longer given any choice as to whether they would meet th[eir statutory] responsibility."); *cf. EPA v. EME Homer City Generation, LP*, 572 U.S. 489, 497 (2014) (noting this progression toward "increasing[ly] rigor[ous]" federal regulation of interstate air pollution). Congress did so "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population[.]" 42 U.S.C. § 7401(b)(1). The EPA's newly enhanced authority was "designed to provide the basis" for "a massive attack on air pollution." S. REP. NO. 91-1196, at 1. Section 7411(d) ensured that there would be "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." *Id.* at 20.

Describing the Act shortly before its passage, Republican Senator John Cooper explained that the "philosophy of the bill

abandons the old assumption of requiring the use of only whatever technology is already proven and at hand" and instead "set[s] out what is to be achieved." 116 CONG. REC. 32,919 (1970). To that end, the Act did not finely detail specific approaches to enumerated sources or types of air pollution. *See* 116 CONG. REC. 32,901–32,902 (1970) (statement of Sen. Muskie). Congress chose instead to entrust the EPA with flexible powers to craft effective solutions. Only by doing so could air quality regulation hope to reflect developing understandings of escalating problems and bring to bear as-yet-unseen solutions.

American air quality is the proof of that approach. The EPA has worked closely with industry, States, and the public to develop the world's most nimble, responsive, and effective regime of air pollution regulation. For example, in the half-century since the 1970 Act, "the combined emissions of * * * six key pollutants regulated under the National Ambient Air Quality Standards dropped by 73 percent" between 1970 and 2017. *EPA Releases 2018 Power Plant Emissions Demonstrating Continued Progress*, EPA (Feb. 20, 2019), https://www.epa.gov/newsreleases/epa-releases-2018-power-plant-emissions-demonstrating-continued-progress (last visited Jan. 11, 2021).

The EPA's new reading of Section 7411 would atrophy the muscle that Congress deliberately built up. The EPA asserts it lacks authority to curb a pollutant that the Agency itself has repeatedly deemed a grave danger to health and welfare but that eludes effective control under other provisions of the Act. We do not believe that Congress drafted such an enfeebled gap-filling authority in Section 7411.

* * *

In sum, traditional tools of statutory interpretation reveal nothing in the text, structure, history, or purpose of Section 7411 that compels the reading the EPA adopted in the ACE Rule.

3. Compliance Measures

In the ACE Rule, the EPA also limited the measures that sources may use to comply with the States' standards of performance set under Section 7411(d). Recognizing that sources generally have "broad discretion" in how they comply with state standards, 84 Fed. Reg. at 32,555, the EPA nonetheless categorically excluded two specific measures from the States' consideration: averaging and trading, and biomass co-firing. It did so on the ground that these measures do not meet two criteria it determined were required of compliance measures: that they be (1) "capable of being applied to and at the source" and (2) "measurable at the source using data, emissions monitoring equipment or other methods to demonstrate compliance[.]" *Id.* The EPA identified these criteria on account of "both legal and practical concerns[.]" *Id.*

The Agency's legal concern was that non-source-specific compliance measures "would be inconsistent with the EPA's interpretation of the" best system of emission reduction as itself plant-specific. ACE Rule, 84 Fed. Reg. at 32,555–32,556. In that way, the EPA extended to States' compliance measures the same incorrect textual interpretation of the Clean Air Act that underlay its determination of what best systems may include—namely, that the system must be one that can be applied to and at the individual source. The EPA reasoned that "implementation and enforcement of such standards should correspond with the approach used to set the standard in the first place." *Id.* at 32,556.

The Agency's practical concern was that compliance measures that are not source-specific could result in "asymmetrical regulation[,]" meaning the stringency of standards could vary across sources. ACE Rule, 84 Fed. Reg. at 32,556. It argues here that such regulation "could have significant localized adverse consequences" in the case of many pollutants regulated under Section 7411(d). EPA Br. 240.

Because we hold that the EPA erred in concluding Section 7411 unambiguously requires that the best system of emission reduction be source specific, we necessarily reject the ACE Rule's exclusion from Section 7411(d) of compliance measures it characterizes as non-source-specific. The Agency tied that exclusion to its flawed interpretation of the statute as unambiguously confined to measures taken "at" individual plants, so it falls with that decision. ACE Rule, 84 Fed. Reg. at 32,555–32,556.

The statute says nothing about the measures that sources may use to comply with the standards States establish under Section 7411(d), and the EPA cites no separate authority that would require compliance measures to be source-specific, or that Congress meant to so hogtie the States in devising standards of performance. Regardless of any policy-based reasons the EPA offers for limiting compliance measures, then, its decision to exclude averaging and trading and biomass co-firing is foreclosed by its legally erroneous starting point.

Neither can the EPA's policy-based reasons sustain its decision to exclude its disfavored non-source-specific compliance measures in the context of carbon dioxide emissions. Apart from its statutory interpretation, the EPA's only ground for excluding those compliance measures is the Agency's stated concern to avoid asymmetrical regulation.

ACE Rule, 84 Fed. Reg. at 32,556. It argues that asymmetrical regulation "could have significant localized adverse consequences for public health and the environment." EPA Br. 240. The Agency points to the case of fluoride—another pollutant regulated under Section 7411(d)—to note that allowing sources to meet state standards of performance by averaging emissions across units or between facilities "could cause serious environmental impacts on local communities where pollution was under-controlled, causing localized damage." *Id.* In light of such considerations, the EPA worried that a system of averaging and trading "would undermine the EPA's determination" of the best system of emission reduction, leading to the sort of localized consequences the system is designed to guard against. ACE Rule, 84 Fed. Reg. at 32,557.

But that point does not support the EPA's categorical rule, let alone prove that the statute unambiguously compels the Agency's reading. Unlike pollutants such as fluoride, carbon dioxide emissions do not pose localized concerns at the site of emission. Whereas the EPA might determine that the best system for reducing fluoride emissions is one that can be applied to and at the source, and it would be reasonable for the EPA in turn to limit compliance measures to correspond with such a "best system," the same cannot be said of carbon dioxide. Indeed, the EPA recognizes that "CO_2 is a global pollutant with global effects[,]" meaning "there may be few direct and area public health consequences from asymmetrical regulation of carbon dioxide within a State." EPA Br. 239.

The Agency defends its concern about asymmetrical regulation in the context of carbon dioxide emissions with the unsupported contention that an interpretation of Section 7411(d) that allowed non-source-specific compliance measures "would not be limited to carbon dioxide alone." EPA Br. 240. But there is no reason to conclude, and petitioners do not argue,

that the statute requires the EPA to permit non-source-specific compliance measures for every pollutant it regulates under Section 7411. The statute is not so rigid as EPA supposes. In fact, Section 7411 itself does not textually restrict the States' choice of compliance measures for their sources at all. *See also* Power Cos. Pet'rs Br. 25–26; Biogenic Pet'r Br. 16–17. Even if the EPA might reasonably limit compliance measures in specific situations based on its determination of the best system for reducing particular types of emissions with localized consequences, the statute imposes no requirement that such limitations be uniform across the regulation of different pollutants.

In sum, the EPA's conclusion on compliance by sources rises and falls with its legally flawed interpretation of the statute. The Agency's practical concern about asymmetrical regulation could not, in any event, support the exclusion of biomass co-firing or averaging and trading in the particular context of carbon dioxide emission regulation.

B. THE MAJOR QUESTIONS DOCTRINE

The EPA also references the so-called "major questions" doctrine in defense of its statutory interpretation and the ACE Rule. 84 Fed. Reg. at 32,529. But that doctrine does not confine the EPA to adopting solely emission standards that can be implemented physically to and at the individual plant.

The Supreme Court has said in a few cases that sometimes an agency's exercise of regulatory authority can be of such "extraordinary" significance that a court should hesitate before concluding that Congress intended to house such sweeping authority in an ambiguous statutory provision. *See King v. Burwell*, 576 U.S. 473, 485–486 (2015); *Gonzales v. Oregon*, 546 U.S. 243, 262, 266–267 (2006); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000); *accord*

Utility Air Regulatory Group v. EPA (*UARG*), 573 U.S. 302, 324 (2014); *see also MCI Telecommc'ns v. AT&T*, 512 U.S. 218, 231 (1994). Where there are special reasons for doubt, the doctrine asks whether it is implausible in light of the statute and subject matter in question that Congress authorized such unusual agency action. *See, e.g.*, *UARG*, 573 U.S. at 324 (considering whether the challenged rule would "bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization"); *Brown & Williamson*, 529 U.S. at 161 (holding that the FDA could not regulate tobacco because it was "plain that Congress ha[d] not given the FDA the authority that it s[ought] to exercise").

In the ACE Rule, the EPA stated that, while its interpretation of Section 7411 did not depend on the "major question[s] doctrine[,]" the Agency believed that "that doctrine should apply here[.]" 84 Fed. Reg. at 32,529. The Agency reasoned that the Clean Power Plan would have had "billions of dollars of impact on regulated parties and the economy," would have "affected every electricity customer[,]" was "subject to litigation involving almost every State," and would have upset the balance of regulatory authority between federal agencies and the States. *Id.* For those reasons, the Agency concluded that the "interpretive question raised"—whether the "best system of emission reduction" can include measures other than improvements to and at the physical source—"must be supported by a clear[]statement from Congress." *Id.* That was incorrect.

1. The EPA's Regulatory Mandate

Unlike cases that have triggered the major questions doctrine, each critical element of the Agency's regulatory

authority on this very subject has long been recognized by Congress and judicial precedent.

Most importantly, there is no question that the regulation of greenhouse gas emissions by power plants across the Nation falls squarely within the EPA's wheelhouse. The Supreme Court has ruled specifically that greenhouse gases are "air pollutants" covered by the Clean Air Act. *Massachusetts v. EPA*, 549 U.S. at 532. More to the point, the Court has told the EPA directly that it is the Agency's job to regulate power plants' emissions of greenhouse gases under Section 7411. "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants" through a "§ 7411 rulemaking[.]" *AEP*, 564 U.S. at 426–427. The separate opinion agrees. *See* Separate Op. at 14 ("Does the Clean Air Act direct the EPA to make our air cleaner? Clearly yes. Does it require at least some carbon reduction? According to *Massachusetts v. EPA*, again yes.").

On top of that, the issuance of regulations addressing greenhouse gas pollution is mandatory under the statute because of longstanding endangerment findings. In *Massachusetts v. EPA*, the Supreme Court directed the EPA either to make an endangerment finding under the statute for greenhouse gas pollution, or to explain why it would not do so. 549 U.S. at 532–535. The EPA complied. For now more than a decade—from 2009 to the present day in the ACE Rule itself—the EPA has consistently and repeatedly recognized the serious danger that greenhouse gas pollution poses to human health and welfare. *See* ACE Rule, 84 Fed. Reg. at 32,533; New Source Rule, 80 Fed. Reg. at 64,530–64,531; 2009 Endangerment Finding, 74 Fed. Reg. at 66,496–66,497. By statute, that finding triggers a *mandatory* duty on the EPA to regulate greenhouse gas pollution. 42 U.S.C. § 7521(a)(1) (motor vehicle emissions); 42 U.S.C. § 7411(b) (stationary

sources that contribute significantly to such dangerous pollution).[8]

So the EPA has not just the authority, but a statutory duty, to regulate greenhouse gas pollution, including specifically from power plants.

In that way, the pollution measures in the Clean Power Plan do not fit the major-question mold of prior cases. For example, in *Brown & Williamson*, the major question was whether the agency had authority to regulate tobacco at all. There, the Supreme Court ruled that there was "reason to hesitate" before concluding that the provisions of the Food, Drug, and Cosmetic Act covering restricted devices, *Brown & Williamson*, 529 U.S. at 134 (citing 21 U.S.C. § 360j(e)), gave the Food and Drug Administration the authority to regulate

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[8] As discussed below with respect to the challenge brought by the Coal Petitioners (*infra* at III.A.1), the legal basis for the EPA's regulation of greenhouse gas emissions from existing power plants in both the Clean Power Plan and the ACE Rule was the Agency's prior 2015 decision to issue standards of performance for carbon dioxide emitted from new power plants. That decision, in turn, was based on the Agency's recognition (since the 1970s) that fossil-fuel-fired power plants contribute significantly to air pollution, which "may reasonably be anticipated to endanger the public health or welfare." 42 U.S.C. § 7411(b)(1)(A); *see* Air Pollution Prevention and Control: List of Categories of Stationary Sources, 36 Fed. Reg. 5931, 5931 (March 31, 1971); Air Pollution Prevention and Control: Addition to the List of Categories of Stationary Sources, 42 Fed. Reg. 53,657, 53,657 (Oct. 3, 1977). The EPA also determined in 2015 that power plants contribute significantly to greenhouse gas pollution in particular. *See* New Source Rule, 80 Fed. Reg. at 64,531. That determination, combined with the determination that greenhouse gases are dangerous to public health and welfare, triggers a mandatory duty to regulate under Section 7411(b)(1)(A).

tobacco given its "unique political history" and its role as a "significant portion of the American economy." *Id.* at 159. The Court reasoned based on the overall drug-regulatory scheme, as well as Congress having "created a distinct regulatory scheme for tobacco products," that Congress "could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion." *Id.* at 159–160.

That question of agency authority to regulate the matter in question was absent for the Clean Power Plan. In fact, the Supreme Court in *Massachusetts v. EPA* rejected the analogy between regulation of greenhouse gases as a pollutant under the Clean Air Act and regulation of tobacco as a drug under the Food, Drug, and Cosmetic Act. 549 U.S. at 530–531. Treating tobacco as a drug would have been wholly novel, requiring the agency to ban virtually all tobacco products—a result the Court suspected Congress did not intend. *Id.* at 531; *Brown & Williamson*, 529 U.S. at 143. By contrast, the Supreme Court explained, greenhouse gases are air pollutants that fall squarely within the Clean Air Act's coverage, and the Act would subject such pollutants, if the agency makes the necessary findings, only to regulation, not prohibition. *Massachusetts v. EPA*, 549 U.S. at 531.

The Clean Air Act also contains its own limits on regulation, like mandating that the EPA take into account such factors as available technology and the cost of compliance. *Id.* (citing 42 U.S.C. § 7521(a)(2)); *see also* 42 U.S.C. § 7411(a)(1) (requiring consideration of health and environmental impacts, energy requirements, and cost). In that way, Congress designed the Clean Air Act's processes for regulating air pollution to adapt to "changing circumstances and scientific developments" without imposing unreasonable technological or financial burdens on industry. *Massachusetts*

v. EPA, 549 U.S. at 532. So, unlike the major question of tobacco regulation in *Brown & Williamson*, there is "nothing counterintuitive" about the EPA's reasonable regulation of dangerous airborne substances like greenhouse gases. *Id.* at 531–532.

Similarly, the major question in *UARG* was whom the EPA was attempting to regulate. In that case, the Supreme Court held that the EPA's statutory permitting authority for the construction and modification of stationary sources was "designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens"—sources like power plants. 573 U.S. at 322. The Court held that, without clear statutory grounding, the EPA's effort to extend permitting requirements to literally millions of small sources of greenhouse gas pollution but of no other regulated pollutants—sources like schools, hospitals, churches, and shopping malls—overshot its statutory authority. *Id.* at 324, 328.

The Clean Power Plan, by contrast, regulated the very entities the EPA was told by the Supreme Court in *AEP* and *UARG* to regulate—fossil-fuel-fired power plants. And it employed statutory tools that were "suitable" for application to the long-regulated power industry. *See UARG*, 573 U.S. at 323, 324 n.7. *American Electric Power* pointed the Agency to regulation under Section 7411 specifically, explaining that "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from [new, modified, and existing] powerplants" using the regulatory tools laid out in Section 7411. 564 U.S. at 424–426.

That is no doubt a significant task for the EPA. But that is not because of any agency overreach. It is the product of

Congress' charge that the EPA regulate air pollution nationwide. And with respect to regulating greenhouse gas pollution in particular, it reflects the fact that fossil-fuel-fired power plants predominate the power industry and are spread across the Nation. *See* United States Energy Information Administration (EIA), *Frequently Asked Questions: What is U.S. Electricity Generation by Source?* (Nov. 2, 2020), https://www.eia.gov/tools/faqs/faq.php?id=427&t=2 (last visited Jan. 11, 2021); EIA, *U.S. Energy Mapping System*, https://www.eia.gov/state/maps.php (last visited Jan. 11, 2021). So much so that they "are by far" the greatest stationary contributor to greenhouse gas pollution and the significant dangers it causes for the public health and welfare. New Source Rule, 80 Fed. Reg. at 64,522.

2. Best System of Emission Reduction

So *what* the EPA may regulate (greenhouse gas pollution), and *whom* it may target (power plants), and *how* (under Section 7411) have all been resolved and so do not trigger the major questions doctrine.

That leaves the EPA no place to house its major-question objection other than in the interpretation of the statutory term "best system of emission reduction," 42 U.S.C. § 7411(a)(1). More specifically, the EPA says the use of any emission-control measures that do not operate at the individual physical plant level requires an express statement from Congress, and that federal standards that might encourage generation-shifting are therefore categorically forbidden under Section 7411.

But the major questions doctrine does not apply there either for a number of reasons.

a. Statutory Design

For starters, the "best system of emission reduction" plays a cabined role in the statutory scheme. The determination of the best system of emission reduction is entirely internal to the EPA. The EPA itself evaluates relevant scientific, technological, and economic evidence to identify, in its judgment, the "best system of emission reduction" available, and the "degree of emission limitation achievable" through it. 42 U.S.C. § 7411(a)(1).

In making that determination, the statute significantly reins in the EPA's judgment by requiring the Agency to (1) "tak[e] into account the cost of achieving such reduction," (2) factor in "any nonair quality health and environmental impact," (3) balance the effect on "energy requirements," and (4) ensure that the system has been "adequately demonstrated[.]" 42 U.S.C. § 7411(a)(1). To be "adequately demonstrated[,]" we have explained, the system must be shown to be reasonably "reliable," "efficient," and "expected to serve the interests of pollution control without becoming exorbitantly costly[.]" *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 969 (1974); *see also Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 391 (D.C. Cir. 1973) (whether a system is adequately demonstrated "cannot be based on 'crystal ball' inquiry").[9]

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[9] In addition to these statutory constraints, the EPA has tied its own hands by requiring that the best system include only actions touching three bases: (i) they reduce emissions (rather than, for example, capturing emissions after they are released into the air by planting trees), (ii) sources themselves can implement them, and (iii) they target supply-side activities. *See* Clean Power Plan, 80 Fed. Reg. at 64,776, 64,778–64,779.

Once the EPA identifies a best system that meets those requirements and calculates the degree of emission limitation it allows, the Clean Air Act leaves it to the States to set their own standards of performance for their existing pollution sources. 42 U.S.C. § 7411(d). The cooperative-federalism design of Section 7411(d) gives the States broad discretion in achieving those emission limitations. *See AEP*, 564 U.S. at 428 ("The Act envisions extensive cooperation between federal and state authorities, generally permitting each State to take the first cut at determining how best to achieve EPA emissions standards within its domain[.]") (internal citations omitted). In addition, Section 7411(d) expressly allows States, in setting their emission standards, to "take into consideration, among other factors, the remaining useful life" of its existing sources. 42 U.S.C. § 7411(d).

So the EPA's scientific and technological identification of the best system of emission reduction cannot bear the major-question label. Determining the system is a task expressly and indisputably assigned by Congress to the EPA and requiring specialized agency expertise. That system serves only as the basis for the EPA to set the emission-reduction targets in its quantitative guidelines. The States retain the choice of how to meet those guidelines through standards of performance tailored to their various sources. Neither exercise entails resolution of a major question.

The EPA argues that its own best-system process raised a major question by "impos[ing] 'generation shifting[.]'" EPA Br. 99. But under Section 7411(d), the EPA does not impose the "best system of emission reduction" on anyone. Instead, each State decides for itself what measures to employ to meet the emission limits, and in so doing may elect to consider the "remaining useful life" of its plants and "other factors." 42 U.S.C. § 7411(d). *See* Clean Power Plan, 80 Fed. Reg. at

64,709–64,710, 64,783. The Clean Power Plan, in fact, afforded States considerable flexibility in choosing how to calculate and meet their emissions targets. *See, e.g.*, *id.* at 64,665, 64,756–64,757, 64,834–64,837.[10]

Congress already focused on the issue and made the decision to rope the EPA's selection of a best system of emission reduction about with all of those substantive and structural limitations. So the major questions doctrine does not provide any basis for concluding that the Clean Air Act *categorically* forecloses the EPA's consideration of even those generation-shifting measures that are already widely in use by States and power plants and have been demonstrated to be reasonable, reliable, effective, and not unduly disruptive to the regulated industry. *See* Clean Power Plan, 80 Fed. Reg. at 64,735, 64,769.

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[10] The Clean Power Plan expressly contemplated that States and sources might choose to meet their emissions targets by using measures other than the specific heat-rate improvements and generation shifting that the EPA had identified in its best system. *See* 80 Fed. Reg. at 64,755–64,758. The EPA offered a list of alternative available technologies that reduced power plants' carbon dioxide emissions per megawatt, including carbon capture and storage, heat-rate improvements at non-coal plants, fuel switching to gas, fuel switching to biomass, and waste heat-to-energy conversion. *Id.* at 64,756. In certain situations, for example, modifying coal-fired plants to burn natural gas could "help achieve emission limits consistent with the [best system]." *Id.* The Agency also identified a list of alternative measures that States could implement to lower overall emissions from fossil-fuel-fired plants. Those measures included, for example, demand-side energy efficiency—a policy tool that the EPA expected some States to use because "the potential emission reductions from demand-side [energy efficiency] rival those from [generation shifting] in magnitude[.]" *Id.*

In that respect, the EPA's argument sounds much like a second argument rejected by the Supreme Court in *UARG*. In addition to the scope question discussed above, the Court addressed whether the EPA could require facilities that emit conventional pollutants also to implement the "best available control technology" for greenhouse gases. *UARG*, 573 U.S. at 329–333 (citing 42 U.S.C. § 7475(a)(4)). Like the EPA here, the industry petitioners argued that the "best available control technology" standard was "fundamentally unsuited" to greenhouse gas emissions because it had "traditionally" focused on "end-of-stack controls." *Id.* at 329–330. "[A]pplying it to greenhouse gases," the industry petitioners insisted, would make the "best available control technology" standard "more about regulating energy use, which will enable regulators to control every aspect of a facility's operation and design[.]" *Id.* at 330 (internal quotation marks omitted).

The Supreme Court rejected that challenge. The Court explained that the EPA's guidance contemplated both "end-of-stack"–type controls *and* energy efficiency measures. *UARG*, 573 U.S. at 330. And, critically, the Court emphasized that the statute and regulations already imposed "important limitations on [best available control technology] that may work to mitigate petitioners' concerns about 'unbounded' regulatory authority." *Id.* at 331. Among those limitations was the EPA's longstanding statutory interpretation that the best available control technology was required "only for pollutants that the source itself emits," and the EPA's existing guidance that permitting authorities should "consider whether a proposed regulatory burden outweighs any reduction in emissions to be achieved." *Id.* The statute also required the EPA to determine the best available control technology with reference to "energy, environmental, and economic impacts and other costs." 42 U.S.C. § 7479(3); *see also UARG*, 573 U.S. at 333 n.9.

So too here: The numerous substantial and explicit constraints on the EPA's selection of a best system of emission reduction foreclose using the major questions doctrine to write additional, extratextual, and inflexibly categorical limitations into a statute whose "broad language * * * reflects an intentional effort to confer the flexibility necessary to forestall * * * obsolescence." *Massachusetts v. EPA*, 549 U.S. at 532; *see also Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 711 (D.C. Cir. 2000) (where Congress has spoken, court upholds as within agency authority an order that "fundamentally change[d] the regulatory environment in which utilities operate" and "introduc[ed] meaningful competition into an industry that since its inception has been highly regulated and affecting all utilities in a similar way"), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

The EPA points to the Supreme Court's statement in *UARG* that "[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' we typically greet its announcement with a measure of skepticism." 573 U.S. at 324 (quoting *Brown & Williamson*, 529 U.S. at 159).

True. But, as already explained, the EPA made no new discovery of regulatory power with the Clean Power Plan. While power plants are significant players in the American economy, they have been subject to regulation under Section 7411 for nearly half a century. *See, e.g.*, *Costle*, 657 F.2d at 318; *Oljato Chapter of Navajo Tribe v. Train*, 515 F.2d 654, 656–57 (D.C. Cir. 1975). Their emission of massive amounts of carbon dioxide has long been known. And the source of the EPA's duty to regulate that greenhouse gas pollution from power plants was the plain statutory text and Supreme Court precedent, not something the EPA pulled out of a hat. *See AEP*, 564 U.S. at 425; *Massachusetts v. EPA*, 549 U.S. at 532.

In sum, the Clean Air Act expressly confers regulatory authority on the EPA to set standards for reducing greenhouse gas emissions from fossil-fuel-fired power plants nationwide. Congress knew both the scope and importance of what it was doing. And it cabined the EPA's authority with concrete and judicially enforceable statutory limitations. The major questions doctrine is meant to discern, not override, such statutory judgments. Doubly so when the regulatory authority and its reach have been affirmed and enforced by the Supreme Court.

b. Regulatory Consequences

The problems with the EPA's approach to the major-question analysis do not stop there. The Agency also conflates the significance of greenhouse gas regulation of power plants generally with any significance attributable solely to the EPA's choice of a "best system of emission reduction"—the statutory provision where the EPA tried to anchor its major-question objection. Remember, the EPA concluded that the major questions doctrine was triggered centrally by (i) the Clean Power Plan's "billions of dollars of impact" on the economy; (ii) its effect on "every electricity customer"; (iii) the number of litigation challenges it spawned, "involving almost every State"; and (iv) its perceived shifting of regulatory authority between federal agencies and the States. ACE Rule, 84 Fed. Reg. at 32,529.

Taking the characterizations as true, those consequences are a product of the greenhouse gas *problem*, not of the best-system's role in the solution. Given the number and dispersion of fossil-fuel-fired power plants, any nationwide regulation of their greenhouse gas pollution that meaningfully addresses emissions will necessarily affect a broad swath of the Nation's electricity customers. Under the EPA's grave endangerment

finding, so too would a *failure* to regulate those greenhouse gas emissions. *See* 2009 Endangerment Finding, 74 Fed. Reg. at 66,496.

As for the "billions of dollars of impact[,]" the EPA has offered no evidence tying that cost to generation shifting rather than physical plant adjustments or a variety of other means States might choose for complying with emission limits. As the EPA itself previously acknowledged, generation shifting can be cheaper than other demonstrated methods of reducing greenhouse gas emissions, like carbon capture and storage, that take place "at" the source (and thus fall within the EPA's current statutory vision). *See* Clean Power Plan, 80 Fed. Reg. at 64,727.[11] Moreover, the Clean Power Plan's significant projected economic impact was not atypical for Clean Air Act rulemakings by the EPA. *See, e.g.*, *Costle*, 657 F.2d at 314 (upholding 1979 new source performance standards governing emission control by coal-burning power plants that imposed "tens of billions of dollars" of costs on the power sector).

Even assuming that the EPA's federalism concerns could trigger the major questions doctrine (rather than the federalism clear-statement canon), they carry no material weight here. That is because the statutory role of the best system of emission reduction under Section 7411(d) textually preserves and enforces the States' independent role in choosing from among the broadest range of options to set standards of performance appropriate to sources within their jurisdiction. In fact, it is the

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[11] The EPA now takes the position that natural gas co-firing is not adequately demonstrated and that neither co-firing nor carbon capture and storage is part of the best system of emission reduction. *See* ACE Rule, 84 Fed. Reg. at 32,544–32,545, 32,549. But those methods are amenable to implementation "to" and "at" the source, in keeping with the EPA's statutory view.

ACE Rule's unreasoned barriers to certain compliance measures, like generation shifting and biomass co-firing, that hamstring the States. *See supra* Part II.A.3 (analyzing ACE Rule, 84 Fed. Reg. at 32,555–32,556).

Finally, it seems doubtful that the volume of litigation aimed at a regulation can reasonably bear on its major-question status. The Supreme Court has certainly never embraced that idea. For good reason. A doctrine at the mercy of litigation stratagems, or the mere existence of disagreements over which parties find advantage in filing suit, cannot be an elucidating or even logically relevant tool of statutory interpretation.

In any event, the EPA offers no basis for concluding that the best-system determination is what lit the litigation fire. After all, the ACE Rule too has been "subject to litigation" involving 43 States and all manner of other interested parties, despite the Rule's jettisoning of generation shifting as part of the best system of emission reduction. *See* Opinion Caption, *supra*.

c. Regulating in the Electricity Sector

The ACE Rule's last attempt to wrap the best-system determination in the major-question mantle asserts that including generation shifting as part of the best system of emission reduction lacks a "valid limiting principle," and that, by "shifting focus to the entire grid[,]" it would "empower" the Agency "to order the wholesale restructuring of any industrial sector[.]" ACE Rule, 84 Fed. Reg. at 32,529. But that is entirely wrong. The Clean Power Plan was aimed not at regulating the grid, but squarely and solely at controlling air pollution—a task at the heart of the EPA's mandate. Indeed, the EPA's reasoning in the ACE Rule defeats its own argument.

The EPA suggests that counting generation shifting among the tools for emission reduction risks expanding the Agency's regulatory sights too far, because "*any* action affecting a generator's operating costs could impact its order of dispatch and lead to generation shifting." ACE Rule, 84 Fed. Reg. at 32,529 (emphasis added). That is exactly right: *Any* regulation of power plants—even the most conventional, at-the-source controls—may cause a relative increase in the cost of doing business for particular plants but not others, with some generation-shifting effect. That is how pollution regulation in the electricity sector has always worked. Regulators—including, for example, Congress in the Clean Air Act's acid rain cap-and-trade program, 42 U.S.C. §§ 7651–7651o—have long facilitated those generation-shifting effects to serve the goal of pollution reduction. *See* Grid Experts Amicus Br. 13–15.

So the EPA's contention that it cannot consider measures resulting in generation shifting as part of its best system proves far too much: If that were so, the EPA would be limited to considering only measures that power plants could adopt at zero cost, so as to maintain their relative-dispatch position. That is, of course, incompatible with Congress' instruction that the best system take cost into account as only one factor among several, *see* 42 U.S.C. § 7411(a)(1), and contrary to the very nature of environmental law, which requires the regulation of polluters and material changes in their pollution emissions.

The EPA's argument also ignores, again, the critical statutory limitations that the Clean Air Act imposes on the selection of a best system of emission reduction and its function in state plans. Under Section 7411(d), the EPA lacks the authority to "order the wholesale restructuring" of anything. All it can do is identify the best system of emission reduction that has been adequately demonstrated within the cost, energy-

requirement, and other substantive constraints set by Congress, and then calculate achievable emission goals by reference to that system. 42 U.S.C. § 7411(a)(1). States, in turn, set standards of performance only "for" any "*existing source*[,]" and need not implement any aspect of the EPA's "best system[.]" *Id.* § 7411(d)(1) (emphasis added). And the EPA's determination about how best to combat air pollution is, of course, subject to judicial review, including on questions like whether a system has been adequately demonstrated and whether the Agency adequately considered costs. 42 U.S.C. § 7607(b); *cf. AEP*, 564 U.S. at 427; *UARG*, 573 U.S. at 333 n.9. Congress' carefully calibrated system—involving scientific and technological evidence-gathering, close study of existing industry practice, constrained discretion, divided regulatory authority, collaboration with States, and judicial review—leaves no room for the unauthorized agency overreach that the EPA fears.

A group of States and industry groups intervened with other major-question challenges, but their salvos all fall short. They argue that the major questions doctrine is implicated because the EPA has "'no expertise' in electricity generation, transmission, and reliability." State & Industry Intervenors Repeal Br. 30 (quoting *King*, 576 U.S. at 474); *see also Gonzales*, 546 U.S. at 267 (rejecting interpretive rule of the Attorney General that was "both beyond his expertise and incongruous with the statutory purposes and design"). But Section 7411 not only foresees, but *demands* that the EPA consider "energy requirements" when assessing the best system of emission reduction. 42 U.S.C. § 7411(a)(1). The Supreme Court in *AEP* recognized the EPA's signal role in regulating greenhouse gases under Section 7411 notwithstanding that the EPA must consider energy requirements and ensure a reliable energy supply when it does so. 564 U.S. at 427. The Court explained that, when the EPA

is formulating greenhouse gas regulations, it must consider not only "the environmental benefit potentially achievable," but also "our Nation's energy needs and the possibility of economic disruption[.]" *Id.* The Clean Air Act "entrusts such complex balancing to EPA in the first instance, in combination with state regulators." *Id.*; *see* 42 U.S.C. § 7411(a)(1). That definitive reading of the statute by the Supreme Court cannot suddenly become a forbidden major question when the EPA regulates as it was told to do.

The statutory scheme simply gives no quarter to the proposition that, in following Congress' directive to regulate electricity-producing power plants, the EPA is categorically forbidden to consider emission-reduction measures that take into account the nature of the electricity grid in which those power plants operate day in and day out. Nor is it sensible to categorically put off-limits the generation-shifting measures that power plants are already actually using to meet emission requirements. *See* Clean Power Plan, 80 Fed. Reg. at 64,784–64,785.

The State and Industry Intervenors also overlook that the EPA developed the Clean Power Plan with input from other agencies with relevant expertise. *See* Clean Power Plan, 80 Fed. Reg. at 64,672–64,673 (explaining that "[i]nput and assistance from FERC [the Federal Energy Regulatory Commission] and DOE [the Department of Energy] have been particularly important in shaping" aspects of the Clean Power Plan); *id.* at 64,671 (noting "extensive consultation with key agencies responsible for [electric system] reliability[,]" as well as reliance on the "EPA's longstanding principles in setting emission standards for the utility power sector"). *Contrast Delaware Dep't of Nat. Res. & Env't Control v. EPA*, 785 F.3d 1, 14, 18 (D.C. Cir. 2015) (invalidating rule in part because the EPA had failed to consult with other expert agencies on grid

reliability issues). EPA could hardly do its job without substantively engaging with the on-the-ground facts about the electricity system that power plants support. Quite the opposite: An agency's wooden refusal to factor in reality and such on-point considerations would ordinarily render its decisionmaking arbitrary and capricious. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

All told, the EPA's consideration of already-in-use generation shifting as part of the "best system of emission reduction" does nothing to enlarge the Agency's regulatory domain. "We are not talking about extending EPA jurisdiction over millions of previously unregulated entities," but about a familiar process of cooperative federalism applied to "entities already subject to * * * regulation" to address a recognized form of air pollution that repeatedly has been found to endanger public health and welfare. *See UARG*, 573 U.S. at 332. The major questions doctrine cannot rescue the ACE Rule's mistaken interpretation of Section 7411(d) as categorically confining the best system of emission reduction to physical adjustments made only "at" and "to" the power plant.

C. FEDERALISM

The federalism canon lends no support to the ACE Rule's decision to confine the best system of emission reduction to measures that apply exclusively at and to the source. That canon recognizes that "the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory v. Ashcroft*, 501 U.S. 452, 460–461 (1991). So as a matter of constitutional avoidance, courts require Congress to "enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power." *United States Forest Serv. v.*

Cowpasture River Pres. Ass'n, 140 S. Ct. 1837, 1849–1850 (2020).

The federalism clear-statement rule prevents direct federal intrusion into areas of traditional state responsibility unless Congress has made its intent to cross that line explicit. For example, courts will not assume that Congress meant to preempt a State's mandatory retirement age for state judges through the passage of a generic age discrimination law, unless it has clearly expressed its intent to police the qualifications of such high-level state officials. *See Gregory*, 501 U.S. at 463–464. Nor will courts lightly assume that Congress intended to claim state-owned land as part of the National Park System, *see Cowpasture River*, 140 S. Ct. at 1849–1850, to transform simple state-law assaults into breaches of international chemical weapons compacts, *see Bond v. United States*, 572 U.S. 844, 862–863 (2014), or to displace the States' traditional authority to regulate the practice of law, *see American Bar Ass'n v. FTC*, 430 F.3d 457, 466, 471–472 (D.C. Cir. 2005). Only when such conflicts between federal and state regulatory domains are plainly joined by Congress itself will the court confront the sensitive constitutional implications of such measures.

That doctrine does not support the EPA's cramped reading of Section 7411. Interstate air pollution is not an area of traditional state regulation. And federalism concerns do not bar the United States government from addressing areas of *federal* concern just because its actions have incidental effects on areas of state power. *Cf. FERC v. Electric Power Supply Ass'n*, 136 S. Ct. 760, 775–778 (2016) (federal regulation of wholesale electricity market did not intrude on traditional state authority over the retail electricity market, even though wholesale market regulation created an incentive for retail consumers to change their behavior in state-regulated markets).

What is more, the Supreme Court has suggested that the federalism clear-statement rule is of limited applicability when a federal regulatory regime is enforced through a statutory cooperative-federalism framework, as Section 7411(d) is. *See AT&T Corp. v. Iowa Util. Board*, 525 U.S. 366, 378 n.6 (1999) (noting appeals to States' rights as "most peculiar" in the context of "a federal program administered by 50 independent state agencies"); *see also Alaska Dep't of Env't Conservation v. EPA*, 540 U.S. 461 (2004) (declining to adopt dissent's proposed clear-statement rule for federal constraints on state implementation decisions in cooperative-federalism program). *See generally* Abbe Gluck, *Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond*, 121 YALE L.J. 534, 555–556 (2011).

In any case, the Clean Power Plan's incorporation of generation shifting into its best system of emission reduction fell squarely within an area of the federal government's constitutional competence. The EPA does not dispute the government's authority or its statutory mandate to reduce the emission of pollutants that endanger public health and welfare. 42 U.S.C. § 7411(b)(1)(A), (d)(1). The EPA also agrees that greenhouse gases are among the pollutants properly regulated by the federal government. *See AEP*, 564 U.S. at 416–417, 424; *see also supra* Part I.B.2.

The Clean Power Plan directly regulated only the *amount* of greenhouse gas pollutants that may be emitted into the atmosphere. 80 Fed. Reg. at 64,663–64,664. That is an area of unique federal concern. After all, "[a]ir pollution is transient, heedless of state boundaries," *EME Homer City Generation*, 572 U.S. at 496, particularly where the pollutants are greenhouse gases, which have little if any localized effect but great cumulative impact. The inability of individual States

to redress the problem of interstate air pollution, in fact, was among the very reasons for the enactment of the Clean Air Act. *See* 42 U.S.C. § 7401(a)(1), (4); S. REP. NO. 88-638, at 3 (1963) ("Polluted air is not contained in a specific area but is carried from one political jurisdiction to another. It does not know State lines or city limits. Providing air of good quality * * * is a challenge and an obligation for Government operations on all levels."); *id.* at 5 ("The nationwide character of the air pollution problem requires an adequate Federal program to lend assistance, support, and stimulus to State and community programs.").

To be sure, the federal government's regulation of such an interstate problem can have indirect effects on State energy production and utility regulation decisions. But even when those effects are the fully anticipated "natural consequences" of an agency's policy choice, *Electric Power Supply Ass'n*, 136 S. Ct. at 776, that does not transform a fundamentally federal action in a core federal area of concern into a restriction on state action that triggers the federalism canon.[12]

The EPA protests that the Clean Power Plan breached that divide because it expressly considered generation shifting to

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[12] In the ACE Rule, the EPA suggested that the Clean Power Plan's best system of emission reduction was also impermissible as an encroachment on "measures and subjects exclusively left to FERC[.]" 84 Fed. Reg at 32,530. The EPA has not pressed that argument here. For good reason. The effects of environmental regulations on the power grid do not amount to power regulation statutorily reserved to FERC. And, in any event, the constitutional concerns that require us to patrol the boundaries between federal and state authority with vigilance do not support any similar clear-statement requirement regarding turf battles between federal agencies.

determine the best system of emission reduction and, in so doing, stepped on the States' power to regulate electrical utilities' mix of electricity generation. Reg.

But that argument has nothing to do with the narrow construction of Section 7411 that the EPA adopted. After all, the EPA could have set the same emission guidelines predicated on a best system of emission reduction that exclusively employed technological controls applicable at and to the source, like carbon capture and sequestration. And the EPA must agree that the federalism canon would play no role in determining the appropriateness of that system, since on the Agency's own reading, measures applicable at and to the source are precisely what Section 7411 allows.[13]

Nowhere does the EPA explain why reference to a different mechanism—generation shifting—in its calculation of the best system would raise materially different federalism

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[13] While the EPA did not select carbon capture and sequestration as the best system of emission reduction in the ACE Rule, it excluded that process because of cost and feasibility concerns, not federalism interests. *See* 84 Fed. Reg. at 32,547–32,549. That exclusion was a change of position from the Clean Power Plan, where the EPA found that the process was "technically feasible and within price ranges that the EPA has found to be cost effective[.]" 80 Fed. Reg. at 64,727. Carbon capture and sequestration ultimately was not selected as the best system of emission reduction in the Clean Power Plan solely because generation shifting was even more cost-effective. *Id.* at 64,727–64,728. What matters here is that the EPA did not express any concern in either the ACE Rule or the Clean Power Plan that such a system would intrude upon traditional areas of State authority. In the ACE Rule, the EPA permits the use of such technological controls to meet its emission standards, 84 Fed. Reg. at 32,549, 32,555, as it did in the Clean Power Plan, 80 Fed. Reg. at 64,883–64,884.

concerns. Under either system, the only direct obligation imposed on States is the same: a federally set emissions guideline. In both scenarios, the States remain equally free to choose the compliance measures that best fit the needs of their State and industry. And as a practical matter, many if not most States would likely opt for generation shifting over carbon capture and sequestration under *either* rule because the former is cheaper for existing plants. *See* Clean Power Plan, 80 Fed. Reg. at 64,727–64,728; ACE Rule, 84 Fed. Reg. at 32,532 ("Market-based forces have already led to significant generation shifting in the power sector.").

The EPA also suggests that the clear-statement rule operates with particular force here because the Plan imposed uneven regulatory burdens weighted toward States with more high-emitting power plants. But that argument tries to twist principles of federalism into a command of regulatory homogenization that defies on-the-ground reality. Regulations under the Clean Air Act or any environmental law will commonly affect States differently depending on the States' activities. The regulation of pollutants associated with automotive manufacturing affects States with production facilities more than those without. *See, e.g.*, *General Motors Corp. v. United States*, 496 U.S. 530, 534–535 (1990). The regulation of mining-related pollutants imposes greater costs on States with more plentiful mineral resources. *See, e.g.*, *Alaska Dep't of Env't Conservation*, 540 U.S. at 469–470, 474; *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 289–290 (1981). The same point applies to industries like petroleum refining, which are concentrated near navigable waters. *See generally* EIA, *U.S. Energy Mapping System* https://www.eia.gov/state/maps.php (last visited Jan. 11, 2021). Indeed, some regulations impose additional regulatory burdens based literally on the direction the wind blows. *See EME Homer City Generation*, 572 U.S. at 520. Likewise,

States with more navigable water necessarily carry more burdens under the Clean Water Act than those with less.

Affected States, of course, could raise statutory challenges to enforce the Clean Air Act's express constraints, such as required consideration of cost, non-air quality health and environmental impact, or energy requirements under Section 7411(a). And they could always challenge any unreasoned or unwarranted distinctions in regulatory coverage as arbitrary or capricious. But in the absence of such an objection, it does not offend—or even implicate—principles of federalism to observe that States whose industries pollute the Nation's air and so harm the public's health more will, in turn, be affected more by emission controls.

For all of those reasons, nothing in the federalism canon supports the EPA's effort to categorically constrict the best system of emission reduction to measures physically applied at and to the individual plant.

III. THE EPA'S AUTHORITY TO REGULATE CARBON DIOXIDE EMISSIONS UNDER SECTION 7411

A. THE COAL PETITIONERS' CHALLENGES

The North American Coal Corporation and Westmoreland Mining Holdings LLC, both coal mine operators (the Coal Petitioners), bring two challenges to the ACE Rule. Both question the EPA's legal authority to enact the rule. First, the Coal Petitioners argue that the EPA failed to make the required endangerment finding—that carbon dioxide emissions from power plants cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare—before regulating those emissions. *See* 42 U.S.C. § 7411(b)(1)(A). Second, they claim that the EPA's previous regulation of a different air pollutant (mercury) from power

plants under the Hazardous Air Pollutants provision, 42 U.S.C. § 7412, precludes the EPA from now regulating power plants' emission of greenhouse gases under Section 7411(d).

Both arguments fail. The EPA made the requisite endangerment finding in 2015, and the ACE Rule expressly retained that finding. As for the Section 7412 challenge, the EPA has correctly and consistently read the statute to allow the regulation both of a source's emission of hazardous substances under Section 7412 and of other pollutants emitted by the same source under Section 7411(d). The Coal Petitioners' argument rests not on the enacted statutory language, but instead on their own favored reading of one statutory amendment inserted by codifiers. Reading the statutory text as a whole—that is, all of the relevant language enacted by Congress, including two duly enacted amendments—the Clean Air Act authorizes the EPA to regulate both power plants' emissions of greenhouse gases under Section 7411(d) and hazardous air pollutants under Section 7412. That reading is reinforced by the statutory structure, purpose, and history.

1. Endangerment Finding

a. The Record of Endangerment

The Coal Petitioners argue that the ACE Rule was unlawful right out of the box because the EPA failed to make a statutorily required finding that greenhouse gas emissions from power plants cause air pollution that endangers the public health and welfare. That is wrong.

As a reminder, before the EPA can regulate a category of stationary sources like electricity-generating power plants under Section 7411, the EPA Administrator must first find that the source category "in his judgment * * * causes, or contributes, significantly to, air pollution which may

reasonably be anticipated to endanger the public health or welfare." 42 U.S.C. § 7411(b)(1)(A). A formal pronouncement meeting those criteria is known as an "endangerment finding." New Source Rule, 80 Fed. Reg. at 64,529. And once it is made, the EPA is not just empowered, but obligated, to regulate. *See* 42 U.S.C. § 7411(b)(1)(A); *see also supra* note 8.

After the Administrator makes an endangerment finding, the source category is added to the EPA's Section 7411 list, 42 U.S.C. § 7411(b)(1)(A), and the Administrator must promulgate emissions standards (called "standards of performance") for *new* sources in the category, *id.* § 7411(b)(1)(B). As relevant here, unless those dangerous emissions are regulated under another relevant provision of the Clean Air Act, the Administrator must also set an achievable emission guideline based on the "best system of emission reduction" and provide a process for States to submit a plan setting out standards of performance for *existing* stationary sources in that same category. *Id.* § 7411(d)(1)(A)(ii).

The EPA has for decades been regulating emissions other than carbon dioxide from electricity-generating power plants. In 1971, the EPA listed fossil-fuel-fired electricity-generating units with steam-generating boilers as a new source category under Section 7411(b) and promptly established standards of performance for them. *See* Air Pollution Prevention and Control: List of Categories of Stationary Sources, 36 Fed. Reg. 5931 (March 31, 1971); Standards of Performance for New Stationary Sources, 36 Fed. Reg. 24,876, 24,878–24,880 (Dec. 23, 1971). Then, in 1977, the EPA listed fossil-fuel-fired combustion turbines as a new source category under Section 7411 and set performance standards for them. *See* Air Pollution Prevention and Control: Addition to the List of Categories of Stationary Sources, 42 Fed. Reg. 53,657 (Oct. 3,

1977); New Stationary Sources Performance Standards; Electric Utility Steam Generating Units, 44 Fed. Reg. 33,580 (June 11, 1979). These categories cover the power plants at issue today. *See* New Source Rule, 80 Fed. Reg. at 64,531.

Through the 2015 New Source Rule, the EPA began regulating carbon dioxide emissions from electricity-generating power plants. *See* New Source Rule, 80 Fed. Reg. 64,510. Because power plants had already been listed as a regulated source category, the New Source Rule did not need to take any action to add those plants to the Section 7411 list of regulated sources. It just issued, for the first time, standards of performance for carbon dioxide emitted from new power plants. In so doing, the New Source Rule provided the statutory predicate and corresponding duty for the EPA to establish carbon dioxide emission standards for existing power plants as well. Clean Power Plan, 80 Fed. Reg. at 64,715; *see* 42 U.S.C. § 7411(d)(1). The New Source Rule now serves that same function for the ACE Rule, 84 Fed. Reg. at 32,533.

Because the New Source Rule did not add a new category of pollution sources to the Section 7411 list, the EPA concluded that no new endangerment finding was needed. New Source Rule, 80 Fed. Reg. at 64,529–64,530. The EPA nevertheless went on to explain that it chose to regulate carbon dioxide emissions from electricity-generating plants specifically because greenhouse gas pollution endangers public health and welfare and contributes significantly to air pollution. *See id.* at 64,530–64,531. The EPA found in particular that increased atmospheric levels of greenhouse gases, including carbon dioxide, could lead to, among other things, more frequent extreme weather events and wildfires; threats to mental and physical health, especially for children and the elderly; reduced access to food and safe water; and mass

migrations and displacements as a result of rising sea levels. *Id.* at 64,517–64,520.

b. Timeliness

At the outset, the EPA argues that we must disregard the Coal Petitioners' challenge concerning the endangerment finding because it was not timely filed. This is a close question, but we ultimately conclude that the petition is timely.

The Clean Air Act requires that petitions for review challenging an EPA regulation—including any Section 7411 standard of performance—generally must be filed within 60 days of the regulation's publication in the Federal Register. 42 U.S.C. § 7607(b)(1). The Clean Air Act's timeliness bar is "jurisdictional in nature[.]" *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 460 (D.C. Cir. 1998) (quoting *Edison Elec. Inst. v. EPA*, 996 F.2d 326, 331 (D.C. Cir. 1993)).

Importantly, Congress carved out an exception to that 60-day time limit if the petition "is based solely on grounds arising after [the] sixtieth day[.]" 42 U.S.C. § 7607(b)(1). In that situation, the clock resets, and the petitioner must file within 60 days of the occurrence of the new event that "ripens [the] claim" and thereby triggers the basis for a challenge. *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 129 (D.C. Cir. 2012), *rev'd in part on other grounds sub nom. Utility Air Regulatory Group v. EPA* (*UARG*), 573 U.S. 302 (2014); *see also Alon Refining Krotz Springs, Inc. v. EPA*, 936 F.3d 628, 646 (D.C. Cir. 2019); *Honeywell Int'l, Inc. v. EPA*, 705 F.3d 470, 472–473 (D.C. Cir. 2013); *Sierra Club de Puerto Rico v. EPA*, 815 F.3d 22, 26 (D.C. Cir. 2016). A claim "ripens" for purposes of the Clean Air Act when "subsequent factual or legal development creat[es] new legal consequences" for the party seeking review. *Sierra Club de Puerto Rico*, 815

F.3d at 28. This type of delayed challenge is commonly referred to as an "after arising" claim.

We agree with the Coal Petitioners that the ACE Rule is an after-arising event that ripened their challenge to the New Source Rule's endangerment finding.

When the EPA promulgated the New Source Rule in 2015, the Coal Petitioners did not challenge that rule's endangerment finding.[14] That is because they did not plan "to build any new facilities affected by the New Source Rule," and so were not directly affected by it. Coal Pet'rs Reply Br. 3. But when the ACE Rule used the New Source Rule as the predicate for regulating existing coal-fired power plants, ACE Rule, 84 Fed. Reg. at 32,533, the Coal Petitioners became concretely aggrieved by the finding.

Under those circumstances, the Coal Petitioners' challenge to the New Source Rule as an insufficient predicate for the ACE Rule is timely. If the Coal Petitioners had filed suit when the New Source Rule was first promulgated in 2015, their standing would have been in doubt because they did not have any, or intend to build any, new power plants. An asserted injury arising from how the New Source Rule might come to

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[14] The Coal Petitioners claim that there is no timeliness problem because two trade associations with which the Coal Petitioners are affiliated—the National Mining Association and the United States Chamber of Commerce—challenged the New Source Rule. Coal Pet'rs Reply Br. 3 & n.2. There is no evidence or declaration regarding that relationship in the record, aside from counsel's representation at oral argument. Oral Argument Tr. 131:13–17. Because we hold that the after-arising exception makes the Coal Petitioners' own challenge timely, we do not address the relevance, if any, of a prior trade association challenge.

affect the regulation of their existing plants in the future might well have been too speculative to support judicial review. *See Coalition for Responsible Regulation*, 684 F.3d at 115–116, 129–131 (challenge to preexisting regulations was timely, where regulations first affected petitioners due to the recent promulgation of rule targeting motor vehicle emissions); *see also Sierra Club de Puerto Rico*, 815 F.3d at 27; *Honeywell, Int'l*, 705 F.3d at 473. That is why "this court has assured petitioners with unripe claims that 'they will not be foreclosed from judicial review when the appropriate time comes,' * * * and that they 'need not fear preclusion by reason of the 60-day stipulation barring judicial review,'" as long as they file a petition within 60 days of the injury that ripened their claim. *Coalition for Responsible Regulation*, 684 F.3d at 131 (formatting modified).

The EPA urges that the Coal Petitioners could have pressed a challenge to the New Source Rule in 2015 at the latest, as other coal-related entities did, once the EPA promulgated the Clean Power Plan in reliance on the New Source Rule's endangerment finding. *See North Dakota v. EPA*, No. 15-1381 (and consolidated cases).

Perhaps. *See North American Coal Corp. v. EPA*, No. 15-1451 (D.C. Cir.) (consolidated with *West Virginia v. EPA*, No. 15-1363 (D.C. Cir.)). But that would argue over spilled milk. The Clean Power Plan litigation came to a halt when the EPA reconsidered that rule, and the case was ultimately dismissed as moot after the ACE Rule withdrew the Clean Power Plan. Per Curiam Order, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Sept. 17, 2019), ECF No. 1806952. The Coal Petitioners have raised their claim in the ACE Rule litigation, and it would

seem perverse to say they instead should have litigated the matter in a case that will never be decided.[15]

c. Adequacy of the Endangerment Finding

On the merits, the Coal Petitioners press a two-fold challenge to the EPA's compliance with the endangerment-finding requirement. First, they argue that Section 7411(b) requires the EPA to make a pollutant-specific endangerment finding for each stationary source category newly regulated under that provision. In their view, even though the EPA had already found that carbon dioxide emissions significantly cause or contribute to greenhouse gas air pollution that endanger the public health or welfare, the EPA also separately had to find that carbon dioxide specifically from coal-fired power plants is a significant source of that danger. 2009 Endangerment Finding, 74 Fed. Reg. at 66,499, 66,542 (for motor vehicles). Second, the Coal Petitioners claim that the EPA did not make such a finding, leaving it without authority to enact the ACE Rule.

We need not address the Coal Petitioners' first argument. Even assuming that Section 7411(b) requires a source-specific

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[15] There is a second exception to the timeliness bar known as the "reopening rule." *See, e.g.*, *Environmental Def. v. EPA*, 467 F.3d 1329, 1333 (D.C. Cir. 2006). The gist of that rule is that the 60-day jurisdictional review window restarts when an agency, either explicitly or implicitly, reconsiders its former action. *See National Ass'n of Reversionary Prop. Owners v. Surface Transp. Bd.*, 158 F.3d 135, 141 (D.C. Cir. 1998); *National Mining Ass'n v. United States Dep't of Interior*, 70 F.3d 1345, 1351 (D.C. Cir. 1995). Because the after-arising ripeness exception preserves the Coal Petitioners' claim, we need not address the reopening doctrine.

endangerment finding for each pollutant, the EPA made a sufficient finding in the New Source Rule.

i. The New Source Rule

Before making the New Source Rule's endangerment finding keyed to carbon dioxide from new fossil-fuel-fired power plants, the EPA explained its "rational basis" for regulating those sources' emissions of that pollutant under Section 7411. New Source Rule, 80 Fed. Reg. at 64,530. The EPA first outlined why greenhouse gas emissions pose a danger to the public health and welfare, and then explained why it should regulate those emissions from power plants specifically.

For evidence of the harms posed by greenhouse gas air pollution, the EPA first pointed to its 2009 Endangerment Finding, made in connection with the motor vehicle emissions regulation at issue in *Coalition for Responsible Regulation*. New Source Rule, 80 Fed. Reg. at 64,530. There, this court upheld as reasonable the EPA's finding that greenhouse gas emissions threaten public health and welfare. *Id.*; *see also Coalition for Responsible Regulation*, 684 F.3d at 119–126.

In the 2015 New Source Rule, the Agency reviewed substantial scientific evidence, including contemporary studies from the National Research Council, the Intergovernmental Panel on Climate Change, and others that post-dated the record from the 2009 motor vehicle emissions regulation. 80 Fed. Reg. at 64,530–64,531; *see also id.* at 64,517–64,520 (detailing updated developments in scientific evidence). The EPA found that the new studies "len[t] further credence to the validity of the [2009] Endangerment Finding." *Id.* at 64,530. The EPA added that "[n]o information that commentators have presented or that the EPA has reviewed provides a basis for reaching a different conclusion," and that the science at the time had

reaffirmed its understanding of the effects of greenhouse gases on the public health and welfare. *Id.* "The facts," the EPA concluded, "unfortunately, have only grown stronger and the potential adverse consequences to public health and the environment more dire in the interim." *Id.* at 64,531.

The EPA next explained its reasons for regulating greenhouse gases from fossil-fuel-fired power plants specifically, pointing to the exceptionally high levels of emissions from those power plants. *See* New Source Rule, 80 Fed. Reg. at 64,522–64,523, 64,530. To that end, the EPA found that fossil-fuel-fired power plants are the largest stationary sources of greenhouse gas emissions in the United States, accounting for nearly one-third of the United States' greenhouse gas emissions and as much as three times the emissions from the next ten categories of stationary sources combined. *Id.* at 64,530. Coal-fired power plants in particular, the EPA added, are the largest of those large emitters, with just one coal-fired power plant emitting potentially millions of tons of carbon dioxide annually. *Id.* at 64,531. In that way, power plant emissions "far exceed[ed] in magnitude the emissions from motor vehicles," which had been the subject of the endangerment finding upheld in *Coalition for Responsible Regulation*. *Id.*

ii. All Required Findings Were Made

The Coal Petitioners acknowledge the EPA's findings, but argue that Section 7411 requires a two-part endangerment finding—that carbon dioxide from fossil-fuel-fired power plants (1) endangers the public health and welfare, and (2) causes or contributes significantly to greenhouse gas air pollution. *See* 42 U.S.C. § 7411(b)(1)(A) (findings must be for the "category of sources"). The Coal Petitioners do not contest

that carbon dioxide endangers the public health and welfare. *See* Oral Argument Tr. 129:21–22.

Instead, they train their arguments on the second prong, arguing that the New Source Rule did not properly make a finding that fossil-fuel-fired power plants "contribute[] significantly" to greenhouse gas pollution. First, they fault the EPA for relying on the New Source Rule, which provided a rational basis for regulation to support a significant-contribution finding.[16] Second, they argue that the EPA arbitrarily and capriciously failed to define the threshold measure of a "significant" contribution.

To survive those challenges, the EPA needed only to "articulate a satisfactory explanation" for the New Source Rule's endangerment finding, making a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.* (*State Farm*), 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). For an endangerment

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[16] The Coal Petitioners also argue that the EPA was wrong to rely on the 2009 Endangerment Finding because it used the lower "more than a *de minimis or* trivial" contribution standard. Coal Pet'rs Br. (quoting 2009 Endangerment Finding, 74 Fed. Reg. at 66,542). But the New Source Rule relies on the 2009 Endangerment Finding only for part one of the endangerment finding test—that greenhouse gas pollution may reasonably be anticipated to endanger the public health and welfare—which the Coal Petitioners do not contest. *See* New Source Rule, 80 Fed. Reg. at 64,530–64,531. The EPA separately considered the volume of greenhouse gas emissions that motor vehicles contribute to the problem and found it significant. *See* 2009 Endangerment Finding, 74 Fed. Reg. at 66,499, 66,543; *Coalition for Responsible Regulation*, 684 F.3d at 128.

finding, that choice need not include a "precise numerical value" that defines the threshold at which air pollution endangers the public health and welfare. *Coalition for Responsible Regulation*, 684 F.3d at 326. Instead, a "'more qualitative' approach," employing reasoned predictions based on "empirical data and scientific evidence," may suffice. *Id.* at 327 (quoting *Ethyl Corp. v. EPA*, 541 F.2d 1, 56 (D.C. Cir. 1976)). Such an approach "is a function of the precautionary thrust of the [Clean Air Act] and the multivariate and sometimes uncertain nature of climate science, not a sign of arbitrary or capricious decision-making." *Id.* By that measure, both of the Coal Petitioners' objections fail.

For starters, it is perfectly permissible, and commendably efficient, for an agency to re-confirm and build consistently upon such formally made factual determinations. It makes eminent sense, for example, for the EPA to take what it learned in regulating automobiles' greenhouse gas emissions and apply that in evaluating the need for regulation of another source of the same pollutant—fossil-fuel-fired power plants. What matters here is that the EPA did not simply conclude that power plants' greenhouse gas emissions significantly contribute to air pollution and stop there. Instead, the EPA went on to explain *why* that significant-contribution finding was warranted. *See* New Source Rule, 80 Fed. Reg. at 64,530–64,531 (explaining that power plants are the largest stationary sources of domestic greenhouse gas emissions and that each coal-fired plant may emit millions of tons of carbon dioxide per year).

The Coal Petitioners' argument that the EPA failed to articulate a specific threshold measurement for significance fares no better. While the failure to identify the trigger point for significance might prove problematic in cases at the margins, the EPA sensibly found that this one is not even close. Because of their substantial contribution of greenhouse gases,

"under any reasonable threshold or definition," carbon dioxide from fossil-fuel-fired power plants represents "a significant contribution" to air pollution. New Source Rule, 80 Fed. Reg. at 64,531; *cf. Massachusetts v. EPA*, 549 U.S. at 525 (While domestic automobile emissions accounted for less than one-third of the United States' domestic emissions, "[j]udged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and * * * to global warming.").

In that regard, we have already held that nothing in the Clean Air Act "require[s] that [the] EPA set a precise numerical value as part of" a contribution endangerment finding. *Coalition for Responsible Regulation*, 684 F.3d at 122 (applying Section 7521(a)(1) of the Clean Air Act). So the "EPA need not establish a minimum threshold of risk or harm before determining whether an air pollutant endangers." *Id.* at 123.

Nevertheless, the Coal Petitioners insist that, before finding significance, the EPA had to decide whether its inquiry would (1) address domestic or global emissions, (2) be measured by a "simple percentage criterion" or another metric, (3) factor in historical trends and/or future projections, and (4) involve a different process for greenhouse gases than other pollutants. *See* Coal Pet'rs Br. 17. Whether the EPA could reasonably decide to factor in such considerations is not before us. What matters here is that nothing in the Clean Air Act or precedent mandates determinations on each of those factors—at least not in a case in which there is no showing that any of them would have made any difference. Given that the United States, at the time of the endangerment finding, was the second-largest emitter of greenhouse gases in the world, *see* 2009 Endangerment Finding, 74 Fed. Reg. at 66,538, it was not arbitrary or capricious for the EPA to conclude that the source

of close to one-third of those emissions is a significant contributor to air pollution by any measure. The global nature of the air pollution problem means that "[a] country or a source may be a large contributor, in comparison to other countries or sources, even though its percentage contribution may appear relatively small" in the context of total emissions worldwide. *Id.* Looking just at the Coal Petitioners' calculations, power plants contributed a hefty 4.5 percent to global greenhouse gas emissions in 2013. *See* Coal Pet'rs Br. 18. More to the point, a holding that greenhouse gas emissions by fossil-fuel-fired power plants are not significant would make it nigh impossible for any source of greenhouse gas pollution to cross that statutory threshold.[17]

For those reasons, we hold that the New Source Rule's endangerment finding provided a sufficient basis for the EPA's promulgation of the ACE Rule.

2. Section 7411 and Section 7412's Parallel Operation

a. Background on the 1990 Amendments

The Coal Petitioners next argue that the Clean Air Act expressly and unambiguously prohibits the EPA from

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[17] The EPA recently solicited public comment through a proposed rule on the appropriateness of considering such factors when making a significant-contribution finding. *See* Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 84 Fed. Reg. 50,244, 50,269 (Sept. 24, 2019). But the EPA explained that the comments on the proposed rule are meant only "to inform the EPA's actions in future rules," *id.* at 50,267, and explicitly declined to consider the merits of the comments or adopt any of the factors in that final rule, *see* Oil and Natural Gas Sector: Emission Standards for New, Reconstructed,

regulating coal-fired power plants' carbon dioxide emissions under Section 7411(d) because those same power plants' mercury emissions are regulated under Section 7412's Hazardous Air Pollutants provision. The relevant statutory text says otherwise.

To set the stage, as relevant here, the Clean Air Act regulates pollutants emitted by stationary sources like power plants under three distinct programs: (1) the National Ambient Air Quality Standards (NAAQS) program that applies to emissions of six common air pollutants, 42 U.S.C. §§ 7408–7410; (2) the regulation of certain specified pollutants under the Hazardous Air Pollutants program, 42 U.S.C. § 7412; and (3) the regulation of all other dangerous pollutants from new and existing sources under Section 7411.

Congress designed the existing source provision in Section 7411(d) to ensure that there were "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." S. REP. NO. 91-1196, at 20 (1970). So Section 7411(d), in its gap-filling capacity, covers all dangerous pollutants except those already regulated by NAAQS or the Hazardous Air Pollutants provision. *See* Clean Air Act Amendments of 1990 ("1990 Amendments"), Pub. L. No. 101-549, § 108(g), § 302(a), 104 Stat. 2399, 2467, 2574.

From the passage of the Clean Air Act until its amendment in 1990, Congress had left substantially to the EPA the task of building a program to effectively identify and regulate hazardous air pollutants under Section 7412. Specifically, Section 7412(b)(1)(A)—Section 112(b)(1)(A) of the 1970

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and Modified Sources Review, 84 Fed. Reg. 57,018, 57,058 (Sept. 14, 2020).

Public Law—had instructed the EPA to publish a list of hazardous air pollutants that it would then regulate under Section 7412's terms. *See* Clean Air Act Amendments of 1970 ("1970 Amendments"), Pub. L. No. 91-604, sec. 4(a), § 112(b)(1)(A), 84 Stat. 1676, 1685. Section 7411(d), for its part, covered "any air pollutant * * * for which air quality criteria have not been issued or which is not included on a list published under section * * * 112(b)(1)(A)" by the EPA. *Id.*, sec. 4(a), § 111(d)(1)(A), 84 Stat. at 1684.

After two decades, Congress found that Section 7412 had "worked poorly" in that the EPA had regulated only eight hazardous pollutants under Section 7412. S. REP. NO. 102-228, at 128 (1989); *see id.* at 131. Through the 1990 Amendments to Section 7412, Congress forced the EPA's hand by statutorily designating 191 hazardous pollutants that Congress required the EPA to regulate. *See* 1990 Amendments, sec. 301, § 112(b)(1), 104 Stat. at 2532–2535 (codified at 42 U.S.C. § 7412(b)(1)); *see also* S. REP. NO. 102-228, at 133. Congress also called on the EPA to add to the list. 1990 Amendments, sec. 301, § 112(b)(2)–(3), 104 Stat. at 2535–2537 (codified at 42 U.S.C. § 7412(b)(2)–(3)). Neither greenhouse gases in general nor carbon dioxide in particular were on Congress' statutory list. Nor have they ever been added by the EPA.

That change to Section 7412(b) necessitated a corresponding technical change to Section 7411(d)'s carve-out of pollutants already regulated under the Hazardous Air Pollutants program, since the cross-referenced "list published under section * * * 112(b)(1)(A)" no longer existed. Congress' update of the statutory cross-reference is the root of the present dispute. That is because each chamber of Congress articulated

the technical correction differently, and yet both were enacted into law.

The Senate—in a section entitled "Conforming Amendments"—passed a straightforward amendment that struck "112(b)(1)(A)" from the Section 7411(d) exclusion, and replaced it with "112(b)"—which is the provision containing the new statutory list of hazardous pollutants to which the EPA could later add. 1990 Amendments, § 302(a), 104 Stat. at 2574. Just as before the 1990 Amendments, under the Senate Amendment, only hazardous pollutants on the Section 7412 list were excluded from Section 7411(d)'s regulation of existing sources' emissions, while dangerous pollutants not addressed by the Hazardous Air Pollutants or NAAQS programs remained in Section 7411(d)'s domain.

The House, for its part, called its technical amendment of the cross-reference "Miscellaneous Guidance," and it similarly deleted "112(a)(1)(B)[,]" and then excluded any air pollutant that is "emitted from a source category which is regulated under section 112." 1990 Amendments, § 108, 108(g), 104 Stat. at 2465, 2467.

Both of those amendments made it into the Conference Report, H.R. REP. NO. 101-952, at 73, 183 (1990) (Conf. Rep.), and, after being passed by both chambers of Congress and signed by the President, they both became part of the Public Law.

Congress' Office of the Legal Revision Counsel is tasked with compiling and codifying the public law and publishing it in the United States Code. The Counsel, of course, has no authority to alter the substance of the Statutes at Large. *See Ganem v. Heckler*, 746 F.2d 844, 851 (D.C. Cir. 1984) ("[T]he changes made by the codifiers, whose 'choice, made * * * without approval of Congress * * * should be given no weight,'

are of no substantive moment.") (internal quotation marks omitted) (quoting *North Dakota v. United States*, 460 U.S. 300, 310 n.13 (1983)); *see also Positive Law Codification*, OFFICE OF THE LAW REVISION COUNSEL, https://uscode.house.gov/codification/legislation.shtml (last visited Jan. 11, 2021) (For non-positive law titles, such as Title 42, "there are certain technical, although non-substantive, changes made to the text for purposes of inclusion in the Code.").

When faced with the Senate and House Amendments' differing articulations of the cross-reference update, the Counsel chose to publish only the House Amendment in the United States Code.

b. Interpreting the House and Senate Amendments

The Coal Petitioners argue that the House Amendment's technical update of the cross-reference actually worked a major substantive change in the law by categorically and unambiguously excluding from Section 7411 not the hazardous *pollutants* already regulated under Section 7412, but any *stationary sources* of hazardous pollutants regulated under Section 7412. In their view, once a source is subject to regulation under Section 7412 for any single listed hazardous pollutant, all of its other pollution emissions are off limits for regulation under Section 7411(d). More specifically, the Coal Petitioners' position is that, because the EPA regulates one hazardous air pollutant—mercury—emitted from coal-fired power plants, the EPA is powerless to regulate under Section 7411(d) every other non-"hazardous," but still

significantly dangerous, pollutant those same power plants emit, including greenhouse gases.[18]

On the other hand, for thirty years—from the enactment of the 1990 Amendments to the present day—the EPA has read the House's "Miscellaneous Guidance" as just that—a miscellaneous technical amendment that, like the Senate Amendment, simply updated the Section 7411(d) cross-reference to exclude the regulation of a stationary source's emission of pollutants that are already regulated under Section 7412.

For the Coal Petitioners' challenge to succeed, we would have to agree with their ambitious reading of the House Amendment as *precluding* regulation under Section 7411 of even those pollutants that are not covered by Section 7412. We also would have to ignore the duly enacted Senate Amendment entirely. And we would have to reject out of hand the EPA's three-decade-old harmonizing reading of the statutory amendments, the text of Section 7411(d), and the statutory structure. We decline the invitation because that is not how statutory interpretation works.

At the outset, the EPA seeks deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). If this were an ordinary EPA interpretation of a Clean Air Act provision, we would apply exactly that framework. *See UARG*, 573 U.S. at 315 ("We review EPA's

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[18] *See* National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 77 Fed. Reg. 9304 (Feb. 16, 2012) (regulating mercury).

interpretations of the Clean Air Act using the standard set forth in *Chevron*[.]").

But this is no ordinary case. Here, the way in which the codifiers assembled the U.S. Code version of Section 7411(d) by omitting the Senate Amendment conflicts with the Statutes at Large, which is the definitive legal evidence of what the law is. 1 U.S.C. § 112; *see id.* § 204(a) (United States Code provides only *prima facie* evidence of the federal law). So any ambiguity arises from our duty to textually harmonize two duly enacted but differently articulated statutory provisions. In undertaking that task, we need not decide whether *Chevron* supplies the appropriate framework for reconciling conflicting statutory provisions. *Compare Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 64 (2014) (Kagan, J.) (plurality opinion), *with id.* at 76 (Roberts, C.J.) (concurring in the judgment). Instead, we independently reach the same conclusion as the EPA, harmonizing the House and Senate Amendments by giving "full effect" to both. *Id.* at 64.

i. The Consistent Meaning of Both Amendments

In reconciling the Senate and House Amendments, we start with what the mission of the amendments was. The plain purpose of each amendment was to update Section 7411(d)'s outdated cross-reference to a list created by the EPA under Section 7412*(b)(1)(A)*, in light of Congress' publication of its new statutory list under Section 7412*(b)*. That is why the Senate labeled its provision a "[c]onforming [a]mendment," and the House called its version "[m]iscellaneous [g]uidance." *See* 1990 Amendments, § 302(a), 104 Stat. at 2574 (Senate Amendment); *id.* § 108(g), 104 Stat. at 2465, 2467 (House Amendment). Neither amendment was meant to work a major substantive change in the law.

The Senate took the most direct textual path to updating Section 7411(d)'s cross-reference. Using the Public Law section number for Section 7412 (that is, Section 112), the Senate Amendment simply substituted "section 112(b)" for the outdated reference to "section 112(b)(1)(A)." *See* 1990 Amendments, § 302(a), 104 Stat. at 2574. That way, the Senate Amendment maintains the parallelism of the two exclusions in Section 7411(d) for already-regulated pollutants that are either "included on a list published under section 108(a) [NAAQS] or 112(b) [the Hazardous Air Pollutants provision.]" *Id.* § 302(a), 104 Stat. at 2574 (incorporating Senate Amendment into the preexisting 1970 text, *see* 1970 Amendments, sec. 4(a), § 111(d)(1)(A), 84 Stat. at 1684). Both exclusionary clauses continue, as they had before the 1990 Amendments, to refer directly to specific air pollutants listed for regulation under other statutory provisions, and so to prevent duplicate regulation of the same harmful emissions.

The House Amendment was less efficient, but ended up in the same place. It substituted for "section 112(b)(1)(A)" the phrase an air pollutant that is "emitted from a source category which is regulated under section 112[.]" 1990 Amendments, § 108(g), 104 Stat. at 2467 (codified at 42 U.S.C. § 7411(d)(1)(A)(i)). So, with the House Amendment's phrasing, Section 7411(d)'s exclusion reads, as relevant here, that each State shall

> establish[] standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title [the NAAQS program] or emitted from a source category which is regulated under section 7412 of this title [the Hazardous Air Pollutant program] but (ii) to which a standard of performance under this section

> would apply if such existing source were a new source[.]

42 U.S.C. § 7411(d)(1)(A).

Reading the House Amendment within Section 7411(d)(1) "in [its] context and with a view to [its] place in the overall statutory scheme" shows that the House Amendment, like the Senate Amendment, just updated the cross-reference to exclude pollutant emissions already regulated for stationary sources under the Hazardous Air Pollutant program. *King v. Burwell*, 576 U.S. 473, 486 (2015) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132, 133 (2000)).

First, the entire point of the text that follows (i)—that is, romanette one—is to modify the phrase "air pollutant." "Air pollutant" is, in fact, the last antecedent to which all of the language in romanette one speaks. And grammatically, the last-antecedent rule means that a limiting phrase is generally read to "modify[] only the noun or phrase that it immediately follows." *Lockhart v. United States*, 136 S. Ct. 958, 962 (2016) (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)). In other words, the whole point of romanette one, including the House Amendment language, is to define which "air pollutant[s]" cannot be regulated under Section 7411(d) because those same pollutants are already regulated under the NAAQS or Hazardous Air Pollutants programs.

Second, reading the entirety of romanette one to modify "air pollutant" gives the updated cross-reference to Section 7412 full meaning.[19] *See UARG*, 573 U.S. at 317 (The

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[19] Contrary to the separate opinion's view, *see* Separate Op. 34, use of the term "source category" (rather than "list") leaves open whether the EPA might regulate, in its Section 7411(d) gap-filling

phrase "any air pollutant" in Section 7411 must be given "a reasonable, context-appropriate meaning[.]"). The EPA has regulated over 140 source categories under Section 7412. EPA Br. 180. But it regulates only their emission of hazardous pollutants. In other words, Section 7412's regulatory scheme operates not broadly on the source category, but only on its emissions of the specified air pollutants. So Section 7412 does not and cannot police a source category's every emission, only its emission of "hazardous" air pollutants. That is why it is called the Hazardous Air Pollutants program, not the Hazardous Sources program. Reading Section 7411(d) as excluding only those air pollutants already governed by Section 7412's emissions regulations maps exactly onto romanette one's parallel exclusion of pollutants (not sources) already regulated under NAAQS. *See* 42 U.S.C. § 7411(d)(1)(A)(i). And it fits with Section 7411's gap-filling purpose, which is to capture those dangerous air pollutants not covered by NAAQS or the Hazardous Air Pollutants program. *See* S. REP. NO. 91-1196, at 20.

Third, at the same time that Congress amended Section 7411(d), it also added a savings clause,

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capacity, the emission even of hazardous air pollutants listed under Section 7412 when emitted by sources that Section 7412 does not reach, but to which Section 7411 does apply, *see* 42 U.S.C. § 7412(c)(1), (3)–(6); *see also* Clean Power Plan, 80 Fed. Reg. at 64,714–64,715 (stating that "both the House and Senate amendments should be read individually as having the same meaning in the context presented in this rule," but that "it is reasonable to interpret the House amendment of the Section [7412] Exclusion as only excluding the regulation of [hazardous air pollutant] emissions under [Clean Air Act] section [7411(d)] *and only when that source category is regulated under* [*Clean Air Act*] *section* [*7412.*]") (emphasis added).

Section 7412(d)(7), to the Hazardous Air Pollutants provision. That provision says that "[n]o emission standard or other requirement promulgated under this section shall be interpreted, construed, or applied to diminish or replace * * * applicable requirements established pursuant to section [7411], part C or D[.]" 1990 Amendments, sec. 301, § 112(d)(7), 104 Stat. at 2540–2541 (codified at 42 U.S.C. § 7412(d)(7)). That language requires reading Section 7411(d)'s simultaneously enacted cross-reference to regulation under Section 7412 narrowly and consistently with Section 7411(d)'s complementary role in the statutory scheme. It certainly does not allow courts to read the cross-reference as the major amputation of authority to regulate that the Coal Petitioners propose.

ii. The House Amendment Is Not a Trojan Horse

The Coal Petitioners and the separate opinion eschew reading the House and Senate updates of the cross-reference harmoniously. They prefer to pit the House Amendment against the Senate Amendment and espy in the former a major change in the law that—without a word of warning or explanation—would have significantly curtailed the regulation of air pollutants and broadly insulated stationary sources from regulatory oversight for their non-hazardous but still-dangerously polluting emissions.

There is a litany of problems with that approach.

For starters, recall that the House and Senate Amendments were meant to address an outdated statutory cross-reference. It is not the function of a single chamber's miscellaneous guidance or conforming amendment of a cross-reference to materially overhaul or truncate a statutory provision's operative reach. Instead, reading both amendments together as serving the same purpose of cross-referencing a new statutory

list of air pollutants fits with their legislative purpose and text. To be sure, the Clean Air Act "is far from a *chef d'oeuvre* of legislative draftsmanship," but "we, and EPA, must do our best, bearing in mind the 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *UARG*, 573 U.S. at 320 (quoting *Brown & Williamson*, 529 U.S. at 133).

More to the point, neither the House nor Senate Amendment said anything about changing the EPA's affirmative regulatory obligation under Section 7411(d) to promulgate emissions guidelines for all air pollutants, except those already regulated under the NAAQS or Section 7412. Yet reading the House Amendment as abruptly withdrawing from Section 7411(d)'s reach entire source categories and all of the otherwise-unregulated emissions they spew would put the House Amendment in direct conflict with not only the unambiguous language of the Senate Amendment, but also with the Clean Air Act's gap-filling structure and purpose, as well as with EPA's overarching regulatory obligation. And it would supposedly do all of that contrary to the statutory history, in defiance of the technical and updating nature of the two Amendments, and without a whisper of warning by a single House or Senate member that the miscellaneous guidance would cripple Section 7411's correlative function in the statutory scheme.

At best, the Coal Petitioners' and separate opinion's vision of the House Amendment would have the EPA's regulatory authority under Section 7411(d) turn on a fluke of timing. The Section 7412(d)(7) savings clause mentioned above, by its terms, protects the operation of Section 7411 regulations already in effect. So, too, does the House Amendment, which only excises what already "is regulated" under Section 7412.

Under the Coal Petitioners' approach, then, the Clean Air Act would allow the EPA to regulate sources under both Section 7411(d) and Section 7412 if, and only if, the EPA adopted its Section 7411(d) regulation *before* the Section 7412 regulation. No rational explanation is offered as to why Congress would want the mere sequencing of regulations to render them either lawful or invalid.

More to the point, the Coal Petitioners and the separate opinion point to nothing in the legislative record even *hinting* at a rationale for removing Section 7412 sources entirely from Section 7411's reach. Nothing suggests that Congress intended to veer off in that substantive legislative direction. The Senate certainly had no such intention.

The Coal Petitioners suggest that the EPA could instead regulate carbon dioxide under Section 7412. But they do not really mean it, as they say in the same breath that carbon dioxide would be a "poor fit" for Section 7412. Coal Pet'rs Br. 33 n.8. That is because Section 7412 strictly regulates all sources that emit ten tons per year or more of hazardous pollutants. 42 U.S.C. § 7412(a)(1). Adding carbon dioxide to that list would lead to a massive regulatory expansion of EPA authority to include everything from schools to hospitals and apartment buildings. *Cf. UARG*, 573 U.S. at 328. It would make no sense to conclude that Congress intended an unheralded string of words in a "Miscellaneous Guidance" amendment to hobble the gap-filling function of Section 7411(d) and to disable the EPA from addressing the source of one-third of this country's greenhouse gas emissions.

Nor can the Coal Petitioners hang their hats on the inclusion of the House Amendment in the codified version of Section 7411(d). Putting aside that the two amendments readily can, and so must, be read harmoniously as just updating

the exclusion of already-regulated air pollutants, it is settled that "the Code cannot prevail over the Statutes at Large when the two are inconsistent." *Stephan v. United States*, 319 U.S. 423, 426 (1943); *see also Five Flags Pipe Line Co. v. Department of Transp.*, 854 F.2d 1438, 1440 (D.C. Cir. 1988) ("[W]here the language of the Statutes at Large conflicts with the language in the United States Code that has not been enacted into positive law, the language of the Statutes at Large controls.").

The Coal Petitioners' and the separate opinion's other efforts to cast aside the Senate Amendment all fail.

First, the Coal Petitioners and the separate opinion point to the Chafee-Baucus Statement of Senate Managers, in which Senators Chafee and Baucus addressed the negotiations surrounding the "Miscellaneous Guidance" in the 1990 Amendments. Using this statement, the Coal Petitioners and the separate opinion try to brush off the duly enacted Senate Amendment as a scrivener's or drafter's error. To that end, they stress the Managers' statement that, in the "Conference agreement," the "Senate recedes to the House except * * * with respect to the requirement regarding judicial review of reports * * * and with respect to transportation planning[.]" 136 CONG. REC. 36,007, 36,067 (Oct. 27, 1990).

That argument does not even get out of the starting gate. It should go without saying that two Managers' description of what a report said does not override the Conference Report itself. And it surely cannot erase the Senate Amendment text that was enacted by both the House and the Senate, and signed into law by the President.

In fact, the Managers were wrong about what the Conference Report said. What the Conference Report actually says is that "the Senate recede[s] from its disagreement to the

amendment of the House to the text of the bill and agree to the same *with an amendment as follows*." H.R. REP. NO. 101-952, at 1 (Conf. Rep.) (emphasis added). The "amendment [that] follow[ed]" included the text of the Senate Amendment as well as the House Amendment. *See id.* at 73, 183. So the agreement retained the Senate Amendment language; the Senate plainly did not withdraw it. The accompanying joint explanatory statement of the Conference Committee confirms that the Senate receded to the House subject to this amendment, "which [was] a substitute for the Senate bill and the House amendment" and contained both the House and Senate Amendments at issue here. *See id.* at 335.

Beyond that, the Chafee-Baucus statement cannot bear the weight the Coal Petitioners and the separate opinion need it to carry. At most, as a "statement of managers," it purports to summarize the more than 800-page Conference Report. 136 CONG. REC. at 36,065. We generally do not view such statements as persuasive evidence of congressional intent, let alone an excuse for unceremoniously discarding unambiguous statutory text as a "drafter's error." *See* Separate Op. at 25 *cf. Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1052 n.67 (D.C. Cir. 1978). Not to mention that we have specifically ruled that this very same floor statement carries little weight. *Environmental Def. Fund, Inc. v. EPA*, 82 F.3d 451, 460 n.11 (D.C. Cir. 1996). Simply put, the statement's purpose was to explain the report, not to change the content of the law, to resolve substantive conflicts, or to effect sweeping change in the statute's reach. *See Glossary Term: Statement of Managers*, U.S. SENATE, https://www.senate.gov/reference/glossary_term/statement_of_managers.htm (last visited Jan. 11, 2021).

Second, the Coal Petitioners argue that we should disregard the Senate Amendment because it is a "[c]onforming

[a]mendment." *See* 1990 Amendments, § 302, 104 Stat. at 2574. A conforming amendment can serve to harmonize statutory provisions, which is exactly what the Senate Amendment did by updating the cross-reference. *See Burgess v. United States*, 553 U.S. 124, 135 (2008).

That does not mean that the statutory provision can be ignored. *See Burgess*, 553 U.S. at 135. The Senate Amendment's careful maintenance of the status quo through a cross-reference update evidences a deliberate preservation of the prior regulatory scope of Section 7411.

By the way, if labels were what matters, the House's "Miscellaneous *Guidance*" provides no platform for the major legislative surgery on Section 7411 that the Coal Petitioners and the separate opinion envision.

Third, the Coal Petitioners ask us to defer to the Office of the Law Revision Counsel's decision to codify the House Amendment rather than the Senate Amendment. The separate opinion reasons as well that the Office of Law Revision Counsel is "the leading candidate" for deference. Separate Op. 23.

No such deference is due. While the Office of the Law Revision Counsel has expertise in the technical aspects of the codification process, it has no license, without Congress' approval, to change the substantive meaning of enacted law or to throw away an entire statutory provision. *See Ganem*, 746 F.2d at 851. That is why the Public Law prevails over the United States Code in case of conflict. *See* 1 U.S.C. § 112; *Stephan*, 319 U.S. at 426; *United States v. Welden*, 377 U.S. 95, 98 n.4 (1964).

Fourth, the Coal Petitioners point to Congress' drafting manuals, which suggest that a first-in-time amendment, such as

the House Amendment, supersedes a later-in-the-legislative-process amendment like the Senate Amendment. *See* U.S. SENATE, OFFICE OF LEGISLATIVE COUNSEL, LEGISLATIVE DRAFTING MANUAL ("SENATE MANUAL") § 126(d) (1997) ("If, after a first amendment to a provision is made * * * , the provision is again amended, the assumption is that the earlier (preceding) amendments have been executed."); U.S. HOUSE OF REPRESENTATIVES, OFFICE OF LEGISLATIVE COUNSEL, HOUSE LEGISLATIVE COUNSEL'S MANUAL ON DRAFTING STYLE ("HOUSE MANUAL") § 332(d) (1995) ("The assumption is that the earlier (preceding) amendments have been executed.").

One problem is that the Coal Petitioners provide no evidence that those manuals or their provisions were in place at the time of the 1990 Amendments.

A bigger problem is that it is doubtful that the cited manual provisions even apply in this scenario. These provisions are located in sections for "Cumulative Amendments," in which an amended provision is added onto by later provisions. *See* SENATE MANUAL § 126(d); HOUSE MANUAL § 332(d). Both manuals suggest that language should be added to such a provision to "alert the reader" to the later amendments. SENATE MANUAL § 126(d); *see also, e.g.*, HOUSE MANUAL § 332(d)(1) (suggesting the following language for a cumulative amendment: "Title XX is amended by adding after section 123 (as added by section 802 of this Act) the following new section:"). That alert did not happen here. The House Amendment in Section 108 includes no reference to the Senate Amendment in Section 302, and there is no evidence that Congress believed it was adopting contradictory amendments in the final law.

The biggest problem of all is that nothing in the manuals says that a later but duly enacted amendment that has been signed into law can be cast aside as meaningless. Nor would it make any sense to do so here, when Congress placed the Senate Amendment in the logical statutory position to update a cross-reference to Section 7412. That amendment is located in the Public Law title addressing Hazardous Air Pollutants and is the very first provision (in Section 302 of the Public Law) that follows the many changes to Section 7412's Hazardous Air Pollutants program (in Section 301 of the Public Law). *See* 1990 Amendments, title III, sec. 301, § 112, 104 Stat. at 2531; *id.* sec. § 302(s), 104 Stat. at 2574. The House Amendment, on the other hand, appears as "[m]iscellaneous [g]uidance" in the title of the Public Law pertaining to the NAAQS program, not the Hazardous Air Pollutants program. *See* 1990 Amendments, title I, § 108(g), 104 Stat. at 2467.

Finally, the Coal Petitioners and the separate opinion insist that, by subsuming the Senate Amendment's targeted focus within their much broader reading of the House Amendment, they are somehow giving effect to both. *See* Coal Pet'rs Br. 29–30; Separate Op. 28–30. The separate opinion sees it as no different than if a father did not want to name a child after a president from Virginia, and a mother did not want to name the child after any president. There is no conflict there, as the separate opinion sees it, because the mother's sweeping prohibition includes "every name excluded by the father (and then some)." Separate Op. 29–30.

But, of course, it is the "and then some" that is the problem. By vastly overshooting the technical task of correcting a cross-reference, the separate opinion's and Coal Petitioners' proposed reading of the House Amendment is not "supplement[ing]" the Senate Amendment's exclusion of duplicate regulation. Separate Op. 30. It is supplanting it by

destroying the Senate Amendment's express preservation of Section 7411(d)'s pre-existing regulatory directive. To borrow the analogy, the separate opinion's vision of parental harmony is likely to be entirely lost on the father whose heart was set on naming his child Abraham, Theodore, or Harry.

The Coal Petitioners' and separate opinion's fundamental mistake in claiming to give effect to both Amendments is that the statute cannot mean both what the Senate Amendment says and what they think the House Amendment says: Section 7411(d) as amended in the 1990 Act cannot have simultaneously preserved and eliminated Section 7411(d)'s preexisting reach. As this case shows, the difference is quite material: It determines whether Section 7411(d) allows any regulation of power plants' greenhouse gas emissions or not. Given that, it blinks reality to claim that absorbing the Senate Amendment into the House Amendment in the manner the Coal Petitioners and the separate opinion propose somehow retains the Senate Amendment's independent effect. A mouse swallowed by a snake, while still present in some metaphysical way, hardly feels equally preserved.

At bottom, when confronted with two competing and duly enacted statutory provisions, a court's job is not to pick a winner and a loser. The judicial duty is to read statutory text as a harmonized whole, not to foment irreconcilability. *See Bell Atl. Tel. Cos. v. FCC*, 131 F.3d 1044, 1047 (D.C. Cir. 1997) ("Where, as here, we are charged with understanding the relationship between two different provisions within the same statute, we must analyze the language of each to make sense of the whole."). Reading both amendments consistently "pursue[s] a middle course" that "vitiates neither provision but implements to the fullest extent possible the directives of each[.]" *Citizens to Save Spencer Cnty. v. EPA*, 600 F.2d 844, 871 (D.C. Cir. 1979). Said another way, the better and quite

natural reading of all of the relevant enacted statutory text, structure, context, purpose, and history is one that harmonizes the House and Senate Amendments, avoids determining that one chamber of Congress smuggled dramatic and unlikely changes to the Agency's regulatory authority into the Act through miscellaneous "guidance," and instead faithfully accomplishes the legislative adjustment needed to respond to the changes to Section 7412.

iii. The Harmonized Reading Stands the Test of Time

Reading the two provisions consistently as successfully performing their "conforming" and "miscellaneous" task of updating Section 7411(d)'s cross-reference to continue to exclude air pollutants already regulated under Section 7412 also maps onto the EPA's consistent interpretation of the statute. And that reading has stood the test of time, without congressional correction. The EPA first announced its interpretation of Section 7411(d) as excluding Section 7412's hazardous pollutants, rather than source categories, in the immediate wake of the 1990 Amendments. *See* Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills, 56 Fed. Reg. 24,468, 24,469 (May 30, 1991) (explaining that Section 7411(d) requires States to submit plans for standards of performance for pollutants that endanger the public health or welfare but are "not 'hazardous' within the meaning of section 112 of the CAA and [are] not controlled under sections 108 through 110 of the CAA"). The EPA has not deviated from that interpretation in the ensuing decades. Oral Argument Tr. 174:19–22. The EPA's view also gives effect to Section 7411(d)'s gap-filling purpose, *see* S. REP. NO. 91-1196, at 20, by allowing it to continue to regulate dangerous pollutants that are not policed by Section 7412 or NAAQS.

The EPA's interpretation also dovetails with the development of judicial precedent. The Supreme Court has specifically addressed Section 7411(d)'s regulation of carbon dioxide emissions from fossil-fuel-fired power plants. In *American Electric Power Co. v. Connecticut* (*AEP*), the Supreme Court held that the Clean Air Act foreclosed any federal common law right to challenge the regulation (or lack thereof) of carbon dioxide emissions from power plants. 564 U.S. 410, 424–425 (2011). In so ruling, the Supreme Court relied on the displacing force of Section 7411, and specifically Section 7411(d). *Id.* In ruling that "the Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants," the Supreme Court pointed directly to the Section 7411 regulatory scheme, including, "most relevant here, § 7411(d)." *Id.* at 424. The Supreme Court even noted that the "EPA is currently engaged in a § 7411 rulemaking to set standards for greenhouse gas emissions from fossil-fuel fired powerplants." *Id.* at 425. As the Supreme Court explained, Section 7411 "'speaks directly' to emissions of carbon dioxide from * * * [power] plants." *Id.* at 424.

The Coal Petitioners and the separate opinion put all their eggs in a footnote in *AEP* that notes Section 7411(d)'s exclusions. The footnote states that the "EPA may not employ § 7411(d) if existing sources of the pollutant in question are regulated under the national ambient air quality standard program, §§ 7408–7410, or the 'hazardous air pollutants' program, § 7412." *AEP*, 564 U.S. at 424 n.7. That footnote comports with the EPA's harmonized reading of the House and Senate Amendments because it says that Section 7411(d) does not apply when "the pollutant in question" is already regulated under one of the other two programs. *See* EPA Br. 189 (pointing out that the footnote's "use of the phrase 'of the

pollutant in question' suggests that [the Court] understood the regulatory bar to be pollutant-specific, consistent with EPA's interpretation").

The footnote could not mean otherwise. At the time of *AEP*, electricity-generating power plants as sources of different pollutants were already regulated under the NAAQS provisions. *See, e.g., American Trucking Ass'ns, Inc. v. EPA*, 283 F.3d 355, 359 (D.C. Cir. 2002) (considering NAAQS for particulate matter and ozone). So if the footnote did anything more than generally flag a statutory exclusion for already-regulated emissions—if it instead embraced the Coal Petitioners' and separate opinion's claim that Section 7411(d) excludes sources, rather than already-regulated emissions—then the Court could not have ruled as it did. Specifically, it could not have relied on Section 7411(d) to hold that the Clean Air Act displaced the common law by "speak[ing] directly" to the EPA's authority to regulate power plants' emission of greenhouse gases. *See AEP*, 564 U.S. at 424. The footnote certainly did not purport to unravel the central rationale for *AEP*'s holding.

* * *

For all of those reasons, we hold that Section 7411(d) allows the EPA to regulate carbon dioxide emissions from power plants, even though mercury emitted from those same power plants is regulated as a hazardous air pollutant under Section 7412.

B. THE ROBINSON PETITIONERS' CHALLENGES

Another group of petitioners—including the Texas Public Policy Foundation, the Competitive Enterprise Institute, and various businesses that petitioned jointly with a forest-services firm named Robinson Enterprises, Inc. (together, the Robinson

Petitioners)—challenge the ACE Rule as overstepping the EPA's authority. The Robinson Petitioners are the only parties that claim that the ACE Rule impermissibly regulates carbon dioxide emissions using Section 7411 of the Clean Air Act rather than Sections 7408 through 7410, under which the EPA sets NAAQS. Our ability to consider that claim fails due to the Robinson Petitioners' lack of standing.

The Robinson Petitioners assert the organizational standing of the Texas Public Policy Foundation and the Competitive Enterprise Institute, both nonprofit, nonpartisan organizations. Because the Foundation and the Institute seek the same relief on the same claim, only one needs to demonstrate standing. *See American Anti-Vivisection Soc'y v. United States Dep't of Agric.*, 946 F.3d 615, 619–620 (D.C. Cir. 2020). The two organizations argue standing based on harm to their own activities; neither appears to be a membership organization, and they claim no associational, or representational, standing based on harm to members.

To establish standing, an organization, like an individual, must show an actual or imminent injury in fact that is fairly traceable to the challenged action and likely to be redressed by a favorable decision. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–379 (1982); *see also American Anti-Vivisection Soc'y*, 946 F.3d at 618. Because neither organization is directly subject to the challenged rule, their "standing is 'substantially more difficult to establish[.]'" *Public Citizen, Inc. v. National Highway Traffic Safety Admin.*, 489 F.3d 1279, 1289 (D.C. Cir. 2007) (Kavanaugh, J.) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992)).

Each organization proffers a distinct ground and theory of standing, so we analyze them in turn. The standing of both the Texas Public Policy Foundation and the Competitive

Enterprise Institute falters on the first factor, injury in fact, so we need not consider the remaining two factors.

The Texas Public Policy Foundation states that its mission is to provide legal counseling and services on a broad swath of matters, including promoting "a balanced approach to environmental regulation" by providing "legal counseling, referral, and advocacy services to individuals and businesses injured by federal, state, or local government overreach[.]" Decl. of Greg Sindelar ¶¶ 5, 7 ("[Its] mission is to promote, defend, and ensure liberty, personal responsibility, property rights, criminal justice reform, greater educational opportunities for all, a balanced approach to environmental regulation, free speech, state's rights under the 10th Amendment, energy sufficiency, and free enterprise[.]"). The Foundation's attorneys litigate cases on a wide range of issues on behalf of clients and refer clients to private counsel when necessary. *Id.* ¶ 8. The Foundation claims that the challenged rule has "caused a drain on [its] resources because [it] has had to divert significant time, effort, and resources from [its] activities in the area of property rights and wetlands regulation, for example," in order to represent clients "who are forced to deal with" the federal regulation of greenhouse gases. *Id.* ¶ 9.

It is well established that injury to an organization's advocacy activities does not establish standing. *See, e.g.*, *Center for Law & Educ. v. Department of Educ.*, 396 F.3d 1152, 1162 n.4 (D.C. Cir. 2005) (citing *Sierra Club v. Morton*, 405 U.S. 727, 739–740 (1972)). That is because "the expenditure of resources on advocacy is not a cognizable Article III injury." *Turlock Irrigation Dist. v. FERC*, 786 F.3d 18, 24 (D.C. Cir. 2015). To hold otherwise "would eviscerate standing doctrine's actual injury requirement" by permitting an interest group to generate its own standing merely by putting an issue in its lawyers' crosshairs. *Id.* (quoting *Center for Law*

& Educ., 396 F.3d at 1162 n.4); *see also National Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995). The Texas Public Policy Foundation declares only that, since the EPA issued the ACE Rule, it has increased its legal counseling, referral, and advocacy on behalf of clients affected by the regulation of greenhouse gases rather than other clients. That is precisely the kind of injury to advocacy—and expenditure of resources on such efforts—that we have held does not amount to injury in fact.

The Foundation does not show the kind of perceptible impairment to its mission that sufficed for standing in a case like *American Anti-Vivisection Society*. There, we found injury because the agency's inaction—specifically, its failure to promulgate standards regarding the humane treatment of birds—deprived the organization of key information on which its public educational activities depended. *See* 946 F.3d at 619. That inaction compelled the organization to develop guidance for the public that otherwise would have been provided by the agency's standards. *Id.* By contrast, the Foundation fails to allege impairment of any similarly "discrete programmatic concerns" aside from its non-cognizable advocacy activities. *National Taxpayers Union*, 68 F.3d at 1433 (quoting *American Legal Found. v. FCC*, 808 F.2d 84, 92 (D.C. Cir. 1987)).

The Foundation points to *Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach*, 469 F.3d 129 (D.C. Cir. 2006), in arguing that the cost associated with more legal counseling, referral, and advocacy services is a source of injury. But the "counseling, referral, advocacy, and educational services" at issue in *Abigail Alliance* were *medical* services, not legal services, and they directly furthered the plaintiff's mission of providing access to potentially life-saving medical drugs and treatments. *See id.* at 132–133. The Foundation's transplantation of *Abigail Alliance*'s words into

the context of legal representation and counseling cannot change the outcome: the costs of litigation are not a cognizable Article III organizational injury. *See Turlock*, 786 F.3d at 24.

The Competitive Enterprise Institute claims a different injury, which also falls short: the risk that it will face higher electricity bills. The Institute works to counter "economic overregulation in areas ranging from technology and finance to energy and the environment," Decl. of Kent Lassman ¶ 3, and avers that it relies on electricity to power its headquarters in Washington, D.C., *id.* ¶¶ 2, 4. It says that the Regulatory Impact Analysis for the ACE Rule shows that the Rule could increase its electricity costs. That analysis estimated a 0.0% to 0.1% increase in average retail electricity prices nationwide attributable to the Rule between 2025 and 2035. *See* S.A. 220 (projecting baseline prices, in cents per kilowatt-hour, of 10.49 and 10.71 in 2025 and 2030, respectively, as compared to 10.50 and 10.72 under the ACE Rule, and estimating no increase attributable to the ACE Rule by 2035).

The Regulatory Impact Analysis that the Institute cites modeled one "illustrative policy scenario on retail electricity prices[,]" S.A. 220, and included the caveat that the estimates were based on "inadequate and incomplete information[,]" meaning that "costs could be lower[,]" S.A. 222. The analysis acknowledged that "the EPA has not analyzed or modeled a specific standard of performance," and recognized that costs could vary depending on "how states might apply the [best system of emission reduction] taking account of source-specific factors in setting standards of performance, and how sources might comply with those standards." S.A. 221–222. It also identified "several key areas of uncertainty related to the electric power sector[,]" including electricity demand, natural gas supply and demand, and longer-term planning by utilities. S.A. 222.

Even a small injury may suffice to support standing, *see, e.g.*, *Competitive Enter. Inst. v. FCC* (*CEI*), 970 F.3d 372, 384 (D.C. Cir. 2020), but it must be "concrete and particularized and actual or imminent, not conjectural or hypothetical," *id.* at 381 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016)). "Were all purely speculative increased risks deemed injurious, the entire requirement of actual or imminent injury would be rendered moot, because all hypothesized, nonimminent injuries could be dressed up as increased risk of future injury." *Public Citizen*, 489 F.3d at 1294 (quoting *Natural Res. Def. Council v. EPA*, 464 F.3d 1, 6 (D.C. Cir. 2006)).

In recognition that standing must rest on a concrete injury that is at least imminent, "we have repeatedly held that litigants cannot establish an Article III injury based on the independent actions of some third party not before this court." *Turlock*, 786 F.3d at 25 (formatting modified) (quoting *Florida Audubon Soc'y v. Bentsen*, 94 F.3d 658, 670 (D.C. Cir. 1996) (en banc)). "This is because 'predictions of future events (especially future actions taken by third parties)' are too speculative to support a claim of standing." *Id.* (quoting *United Transp. Union v. ICC*, 891 F.2d 908, 912 (D.C. Cir. 1989)).

The remoteness and contingency of the prospect that the Competitive Enterprise Institute will in the future actually face even the tiny rate increase *tentatively* projected as possibly arising from the challenged ACE Rule renders its claimed injury speculative and thus defeats its standing. In particular, the effect the Institute anticipates on its future electricity rates depends on how third parties—such as electricity generators, electricity providers, public utility commissions, and state pollution control agencies—might react to the ACE Rule. *See* EPA Br. 192. It also turns on the nature of standards that States decide to set, and on the compliance choices of regulated

sources. *Id.* It remains entirely unclear what standards States would develop in response to the "best system of emission reduction," how and whether those standards would have any effect on the costs of generation and transmission of energy, and whether rates will be affected by any offsetting savings through state or federal support for different generation mixes. A theory that "stacks speculation upon hypothetical upon speculation * * * does not establish an 'actual or imminent' injury." *Turlock*, 786 F.3d at 24 (quoting *New York Reg'l Interconnect, Inc. v. FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011)); *see Arpaio v. Obama*, 797 F.3d 11, 20–23 (D.C. Cir. 2015). In asking us to anticipate the future actions of various third parties that are not before us, the Institute does just that.

At oral argument, the Competitive Enterprise Institute identified as its strongest support our decision in *Competitive Enterprise Institute v. FCC*. But the concrete and actual injury claimed there was traceable through "a relatively simple causal chain[,]" 970 F.3d at 383, unlike the harm asserted here, which is based on "inadequate and incomplete information[,]" S.A. 222, and dependent on third parties' unpredictable responses to the ACE Rule. Critically, the plaintiffs there demonstrated that their internet prices in fact had increased since the agency took its challenged action. *CEI*, 970 F.3d at 382–383. This record lacks any such evidence.

Because neither the Texas Public Policy Foundation nor the Competitive Enterprise Institute shows injury in fact to support the Robinson Petitioners' standing, we cannot address the merits of their NAAQS-related challenge to the ACE Rule.

IV. AMENDMENTS TO THE IMPLEMENTING REGULATIONS

When the EPA repealed the Clean Power Plan and finalized the ACE Rule, it also changed the longstanding implementing regulations generally applicable to emission

guidelines promulgated under Section 7411(d) of the Clean Air Act. *See* ACE Rule, 84 Fed. Reg. at 32,564–32,571. The Public Health and Environmental Organization Petitioners (the Public Health Petitioners) challenge the implementing regulations insofar as they adopt new timing requirements that substantially extend the preexisting schedules for state and federal actions and sources' compliance under Section 7411(d). *See* 40 C.F.R. §§ 60.23a(a)(1), 60.27a(b), 60.27a(c), 60.24a(d); *see also* ACE Rule, 84 Fed. Reg. at 32,567. Because the challenged regulations lack reasoned support, they cannot stand.

The new implementing regulations extend the time allowed for States to submit their plans, for the EPA to review those plans, for the Agency to promulgate federal plans where state plans fall short, and for legally enforceable consequences to attach to sources that are slow to comply. Those extended timeframes apply unless the EPA otherwise specifies with respect to particular emission guidelines. *See* ACE Rule, 84 Fed. Reg. at 32,568. The Public Health Petitioners argue that the amendments are arbitrary and capricious because the Agency altogether failed to address the urgency of controlling harmful emissions—especially the greenhouse gas emissions accelerating climate change.

At the threshold, the EPA asserts that the Public Health Petitioners forfeited any challenge to the amended implementing regulations, but we conclude the claim was preserved. The EPA contends that Petitioners "barely mention" this claim in their opening brief, EPA Br. 268–269 (citing *CTS Corp. v. EPA*, 759 F.3d 52, 60 (D.C. Cir. 2014)), but it was adequately, if concisely, set forth, *see* Pub. Health & Env't Orgs. Br. 11–13. The issue is neither particularly complex nor as momentous as others in the case; Petitioners nonetheless clearly stated and supported the claim with

citations to the record and sources of legal authority. *Id.* That relatively abbreviated treatment suffices. *See, e.g.*, *Tribune Co. v. FCC*, 133 F.3d 61, 69 n.8 (D.C. Cir. 1998) (noting one paragraph in a fifty-eight-page brief arguing that the agency's action was arbitrary and capricious sufficed to preserve the claim).

Petitioners' joint comment on this amendment as the EPA proposed it in the rulemaking process, which Petitioners cite in their brief, provides more detail. *See* Pub. Health & Env't Orgs. Br. 13 (citing Comments of Environmental and Public Health Organizations on Proposed Revisions to Emission Guideline Implementing Regulations 26–27, J.A. 973–974). The EPA well understands the nature of the claim, *see* EPA Br. 268–269, and there is no indication the brevity of the discussion in Petitioners' opening brief prejudiced the Agency at all. *Cf. Avia Dynamics, Inc. v. Federal Aviation Admin.*, 641 F.3d 515, 521 (D.C. Cir. 2011) (forfeiture excused where federal agency was placed on notice of arguments by extensive substantive motion practice).

On the merits, the EPA failed to justify substantially extending established compliance timeframes, including deadlines that it has had in place since 1975. *See* State Plans for the Control of Certain Pollutants from Existing Facilities, 40 Fed. Reg. 53,340, 53,345, 53,346–53,348 (Nov. 17, 1975). Before we can sustain agency action as nonarbitrary under the APA, "the agency must * * * articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). Petitioners' comments took issue with the tepid justifications the Agency offered, but the heart of their challenge is the EPA's complete failure to say

anything at all about the public health and welfare implications of the extended timeframes.

The Agency principally relied on reviving an argument it had considered and rejected when it first adopted the schedule it now displaces: that timeframes for the regulation of existing sources under Section 7411(d) should necessarily mimic or exceed timeframes for adoption of National Ambient Air Quality Standards (NAAQS) under Section 7410 of the Clean Air Act. *Compare* ACE Rule, 84 Fed. Reg. at 32,568, *with* State Plans for the Control of Certain Pollutants from Existing Facilities, 40 Fed. Reg. at 53,345. Section 7411(d) calls for regulations that "establish a procedure similar to that provided by [S]ection 7410[,]" which, like Section 7411, requires States to submit plans for the EPA's approval and, if those plans are either not submitted or fall short, requires the EPA to itself prescribe a plan. *See* 42 U.S.C. § 7410(a)(1), (c)(1); *id.* § 7411(d)(1)–(2). The two sets of rules accordingly reflect generally similar state-federal interactions.

But it is not evident that the statement that Section 7411(d) would use "a procedure similar" to that employed under Section 7410 even speaks to timing rules. As the Agency recognized when it promulgated the 1975 rule, faster compliance was appropriate under Section 7411(d) because plans under this provision are far simpler. They apply only to a single category of source, whereas state plans for NAAQS under Section 7410 cover multiple types of sources. *See* 40 Fed. Reg. at 53,345 (commenting that "Section [7411](d) plans will be much less complex than the [state implementation plans]" required under Section 7410). The Public Health Petitioners' comment on the 2018 proposed amendments to the implementing regulations explained that "a section [7410 state implementation plan] must ensure that ambient air concentrations of a given pollutant in the state will stay below

the EPA-designated standard." J.A. 971. That goal is "far more complicated to both achieve and demonstrate" than limiting source emissions under Section 7411(d), because "meeting the ambient air quality standards involves air quality monitoring, complex modeling procedures, close attention to such factors as topography, wind patterns, cross-[border] transport of air pollution, and many other considerations." J.A. 971. By the same token, Petitioners commented that the EPA failed to justify giving itself as much time to review the simpler Section 7411(d) plans as it has to review state plans under Section 7410. J.A. 971–972. The EPA failed to engage meaningfully with the different scale of the two types of plans, dismissing Petitioners' comment with the conclusory assertion that Section 7411(d) plans "have their own complexities and realities that take time to address." ACE Rule, 84 Fed. Reg. at 32,568.

The EPA's proposed rule also relied on more general claims that the amended timelines are appropriate because of the amount of work involved in States' plan development and in the EPA's review of those plans. *See* Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program: Proposed Rule, 83 Fed. Reg. 44,746, 44,771 (Aug. 31, 2018). In response, Petitioners commented that the EPA did not document any problems during the decades that the existing timelines had been in place. J.A. 972 ("If the agency is truly concerned that the timing provision[s] in the framework regulations are unworkable, it must provide actual evidence of this—which it has not done thus far—and must propose amended provisions that correspond to the actual workload involved in section [7411(d)] rulemakings[.]"). The Final Rule failed to fill that gap. *See, e.g.*, ACE Rule, 84 Fed. Reg. at 32,568. Indeed, the Agency at one point seemed to forget that

it even had a burden of justification under the APA, going so far as to suggest that the obligation was somehow on the *commenters* to show that the various actors do *not* need any additional time. *Id.*

It might be a close call whether, viewed in isolation, the analogy to Section 7410 and the general claim of need for more processing time could supply the "rational connection" the APA requires. *State Farm*, 463 U.S. at 43. But we do not view those reasons in isolation.

The EPA's weak grounds for routinizing additional compliance delays in the amended implementing regulations are overwhelmed by its total disregard of the added environmental and public health damage likely to result from slowing down the entire Section 7411(d) regulatory process. "Normally, an agency rule would be arbitrary and capricious if the agency * * * entirely failed to consider an important aspect of the problem[.]" *State Farm*, 463 U.S. at 43. The extensions of implementation deadlines here give no consideration to the need for speed. Control of emissions from existing sources before they harm people and the environment is the central purpose of Section 7411(d) of the Clean Air Act. Yet when it deferred the compliance deadlines, the EPA did not even mention the need for prompt reduction of those emissions or the human and environmental costs of its substantial new delay.

In their comments, Petitioners emphasized the gravity and urgency of impending harms from unlawfully uncontrolled emissions as a reason the EPA must retain the tighter timeframes in the existing rule, not promulgate a new rule to build in additional years of delay. *See* Comments of Environmental and Public Health Organizations on Proposed Revisions to Emission Guideline Implementing Regulations 26–27, J.A. 973–974. They stressed in particular the broad and

longstanding scientific consensus on the role of carbon dioxide emissions in accelerating climate change, and insisted that "deep emission reductions are needed immediately" in order to avoid "the worst effects of climate change," making time "of the utmost essence." *Id.* They explained how the timing amendments stymie effective control of carbon dioxide emissions:

> [T]he amendments in question would permit up to 60 months to elapse between the time an EPA emission guideline is finalized and the time that affected sources must, at a minimum, begin reducing their emissions through enforceable increments of progress. Assuming EPA issues a final emission guideline for power plant [carbon dioxide] emissions in mid-2019, designated sources can be expected to start reducing emissions in mid-2024. * * * [T]he world has surpassed not only the 350 ppm threshold—that atmospheric concentration of [carbon dioxide] that is considered the maximum safe level—but the 400 ppm threshold as well. If we are to avoid the worst effects of climate change, deep emission reductions are needed immediately: time is simply of the utmost essence. For EPA to inject even *further* delay into the process * * * flouts the agency's Clean Air Act obligation to require emission reductions to prevent this endangerment to public health and welfare.

Comments of Environmental and Public Health Organizations 27, J.A. 974.

Not all source categories or types of emissions subject to Section 7411(d) present problems of the magnitude and urgency of those posed by unregulated carbon dioxide

emissions from power plants. But the Public Health Petitioners' comments on the Agency's proposed amendments to the implementing regulations squarely called on the EPA to explain how slowing the regulatory timeframe with respect to *any* covered emissions or source category might be justified and consistent with the Act's objective. *See* Comments of Environmental and Public Health Organizations 23, J.A. 970.

In response to Petitioners' concrete objections, the final rule neither changed nor better justified the timing provisions. In fact, upon reading the rule's explanation of the deadline extensions, one would have no idea that the EPA actually recognized that greenhouse gas pollution was causing a global climate crisis requiring urgent remediation. In finalizing the proposed extensions to key deadlines, the EPA tersely reiterated its stated interest in giving itself, States, and regulated parties more time to comply—despite no showing of need—and, contrary to its explanation of the rule it displaced, stated that it was important after all to align the timing of the Section 7411(d) state-plan process with the compliance schedule under Section 7410. *See* ACE Rule, 84 Fed. Reg. at 32,564, 32,568.

The EPA did not even hint at how or whether it determined that prolonging public exposure to ongoing harms from pollutants emitted by existing source categories could be justified consistent with the core objectives of the Clean Air Act. That failure is irrational, especially in the face of the EPA's continued adherence to its 2015 finding of an urgent need to counteract the threats posed by unregulated carbon dioxide emissions from coal-fired power plants. The EPA made no mention whatsoever of the harms that Petitioners warned would result if the Agency slackened the pace of state and federal action to mitigate the harms Section 7411(d) targets. In relation to the timing amendments, pollution

control—whether in the context of carbon dioxide and the ACE Rule or air pollution more generally—was simply not on the EPA's agenda. In short, Petitioners called the EPA's attention to an important aspect of the regulatory problem, and the EPA looked away.

The EPA offered what is at best a radically incomplete explanation for extending the compliance timeline. It offered undeveloped reasons of administrative convenience and regulatory symmetry, even as it ignored the environmental and public health effects of the Rule's compliance slowdown. The EPA thus "failed to consider an important aspect of the problem," *State Farm*, 463 U.S. at 43—indeed, arguably the most important aspect. We accordingly vacate the implementing regulations' extensions of the Section 7411(d) compliance periods.

V. VACATUR AND REMAND

The ACE Rule expressly rests on the incorrect conclusion that the plain statutory text clearly foreclosed the Clean Power Plan, so that complete repeal was "the only permissible interpretation of the scope of the EPA's authority under [Section 7411]." ACE Rule, 84 Fed. Reg. at 32,534; *see also id.* at 32,532. "[T]hat error prevented it from a full consideration of the statutory question here presented." *Negusie v. Holder*, 555 U.S. 511, 521 (2009). "Where a statute grants an agency discretion but the agency erroneously believes it is bound to a specific decision, we [cannot] uphold the result as an exercise of the discretion that the agency disavows," *United States v. Ross*, 848 F.3d 1129, 1134 (D.C. Cir. 2017), and the "regulation must be declared invalid, even though the agency might be able to adopt the regulation in the exercise of its discretion," *Prill v. NLRB*, 755 F.2d 941, 948 (D.C. Cir. 1985) (quoting *Planned Parenthood Federation of America,*

Inc. v. Heckler, 712 F.2d 650, 666 (D.C. Cir. 1983) (Bork, J., concurring in part and dissenting in part)); *accord Arizona v. Thompson*, 281 F.3d 248, 259 (D.C. Cir. 2002) (quoting *Prill*, 755 F.2d at 948).

Because the ACE Rule rests squarely on the erroneous legal premise that the statutory text expressly foreclosed consideration of measures other than those that apply at and to the individual source, we conclude that the EPA fundamentally "has misconceived the law," such that its conclusion "may not stand." *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943). Accordingly, we hold that the ACE Rule must be vacated and remanded to the EPA so that the Agency may "consider the question afresh in light of the ambiguity we see." *Negusie*, 555 U.S. at 523 (quoting *Cajun Elec. Power Coop., Inc. v. FERC*, 924 F.2d 1132, 1136 (D.C. Cir. 1991)); *accord Peter Pan Bus Lines, Inc. v. Federal Motor Carrier Safety Admin.*, 471 F.3d 1350, 1354 (D.C. Cir. 2006); *Prill*, 755 F.2d at 948.

VI. CONCLUSION

Because promulgation of the ACE Rule and its embedded repeal of the Clean Power Plan rested critically on a mistaken reading of the Clean Air Act, we vacate the ACE Rule and remand to the Agency. We also vacate the amendments to the implementing regulations that extend the compliance timeline. Because the objections of the Coal Petitioners are without merit, we deny their petitions. And because the Robinson Petitioners lack standing, their petition is dismissed.

So Ordered.

WALKER, *Circuit Judge*, concurring in part, concurring in the judgment in part, and dissenting in part: This case concerns two rules related to climate change. The EPA promulgated both rules under § 111 of the Clean Air Act.[1]

A major milestone in climate regulation, the first rule set caps for carbon emissions. Those caps would have likely forced shifts in power generation from higher-polluting energy sources (such as coal-fired power plants) to lower-emitting

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[1] When this opinion refers to § 111, it is specifically referring to § 111(d). The codified version of § 111(d) is titled "Standards of performance for existing sources; remaining useful life of source." 42 U.S.C. § 7411(d). The first part reads:

> (1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

Id.

sources (such as natural gas or renewable energy sources).[2] That policy is called generation shifting.

Hardly any party in this case makes a serious and sustained argument that § 111 includes a clear statement unambiguously authorizing the EPA to consider off-site solutions like generation shifting. And because the rule implicates "decisions of vast economic and political significance," Congress's failure to clearly authorize the rule means the EPA lacked the authority to promulgate it.[3]

The second rule repealed the first and partially replaced it with different regulations of coal-fired power plants. Dozens of parties have challenged both the repeal and the provisions replacing it.

In my view, the EPA was required to repeal the first rule and wrong to replace it with provisions promulgated under § 111. That's because coal-fired power plants are already regulated under § 112, and § 111 excludes from its scope any power plants regulated under § 112. Thus, the EPA has no authority to regulate coal-fired power plants under § 111.

I.

When the Constitution's ratifiers empowered Congress to legislate on certain matters of national importance,[4] they understood that federal regulation came with risks. For example, Congress might impose widely disbursed costs to

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[2] For ease of reading, this opinion refers to the technical term "coal-fired electric utility generating units" by the slightly less precise but lay-friendlier term "coal-fired power plants."

[3] *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)).

[4] U.S. CONST. art. I, § 8.

benefit insular groups in a nation of diverse economic and political interests. The framers called those groups factions.[5]

To guard against factions, legislation requires something approaching a national consensus. While a single state's simple majority can often subject that state to "novel social and economic experiments,"[6] federal legislation must survive bicameralism and presentment.[7] Only through that process can ideologically aligned states use federal power to impose their will on the unwilling.[8] So too for ideologically aligned environmentalists. Or polluters. Or big tech. Or big labor. Or free traders. Or fair traders. Or farmers. Or fishers. Or butchers. Or bakers.

In that process, each political institution probes legislative proposals from the perspective of different constituencies.[9] The House speaks for the people. The Senate, among other roles, guards the interests of small states. The Electoral College, with representation just short of proportional, strikes a balance between the two. And by staggering elections over two-, four-, and six-year cycles, we further impede fleeting factions from ganging up on small states and unpopular political minorities. The point is: It's difficult to pass laws — on purpose.

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[5] *See* The FEDERALIST No. 10, at 56-65 (J. Madison) (J. Cooke ed., 1961).

[6] *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

[7] U.S. CONST. art. I, §§ 1, 7; *see INS v. Chadha*, 462 U.S. 919, 951 (1983).

[8] Of course, even then, a legislative coalition cannot regulate outside Congress's enumerated powers. *See* U.S. CONST. art. I, § 8.

[9] *See Department of Transportation v. Association of American Railroads*, 575 U.S. 43, 61 (2015) (Alito, J., concurring) ("Our Constitution, by careful design, prescribes a process for making law, and within that process there are many accountability checkpoints.").

This legislative gauntlet sometimes produces unfortunate, even tragic, consequences. Between the 1870s and 1960s, it foreclosed desperately needed civil rights laws. For budget hawks who predict a fiscal crisis, it has blocked entitlement reform. And for those who fear a climate crisis, it has prevented clear congressional guidance on how to cool the planet and who will foot the bill.[10]

That, however, is the price we pay for bicameralism and presentment. Major regulations and reforms either reflect a broad political consensus, or they do not become law.

In its clearest provisions, the Clean Air Act evinces a political consensus. For example, according to *Massachusetts v. EPA*, carbon dioxide is clearly a pollutant, and the Act's § 202 unambiguously directs the EPA to curb pollution from new cars.[11]

But for every carbon question answered in that case, many more were not even presented.[12] For example, does the Clean Air Act force the electric-power industry to shift from fossil fuels to renewable resources? If so, by how much? And who will pay for it? Even if Congress could delegate those decisions, *Massachusetts v. EPA* does not say where in the Clean Air Act Congress clearly did so.

In 2009, Congress tried to supply that clarity through new legislation.

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[10] *Cf. Bowsher v. Synar*, 478 U.S. 714, 722 (1986) ("That this system of division and separation of powers produces conflicts, confusion, and discordance at times is inherent, but it was deliberately so structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power.").

[11] 549 U.S. 497, 532-35 (2007).

[12] In this opinion, "carbon" is used as shorthand for carbon dioxide and other greenhouse gases.

The House succeeded.[13]

The President supported it.[14]

But that effort stalled in the Senate.[15]

Since climate change is real, man-made, and important, Congress's failure to act was, to many, a disappointment. But the *process* worked as it was designed.[16] In general, Senators from small states blocked legislation they viewed as adverse to their voters.[17] And because small states have outsized influence in the Senate,[18] no bill arrived on the President's

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[13] American Clean Energy and Security Act, H.R. 2454, 111th Cong. (2009).

[14] *See Interview with President Obama on Climate Bill*, N.Y. TIMES (June 28, 2009), https://www.nytimes.com/2009/06/29/us/politics/29climate-text.html.

[15] *See* Richard Cowan & Thomas Ferraro, *Senator Graham Calls Cap-and-Trade Plan Dead*, REUTERS (Mar. 2, 2010, 2:26 PM), https://www.reuters.com/article/us-climate-usa-congress/senator-graham-calls-cap-and-trade-plan-dead-idUKTRE62142T20100302.

[16] *Cf. Association of American Railroads*, 575 U.S. at 61 (Alito, J., concurring) ("Bicameralism and presentment make lawmaking difficult *by design*[.]") (cleaned up).

[17] Due to opposition to the 2009 climate bill, it never received a Senate vote. The closest analogue is the 2008 climate bill, which received a cloture vote. And of the states with no Senator voting for the 2008 bill, most of those states have populations smaller than 1/50 of the nation. *Roll Call Vote 110th Congress – 2nd Session,* U.S. SENATE, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=2&vote=00145#state (all internet materials last visited Jan. 10, 2021).

[18] In 2008, *see supra*, for twenty-four state delegations, there was no Senate opposition to the climate bill. That's short of a majority of state delegations, and well short of the 3/5 necessary to break a

desk. Nor have dozens of other climate-related bills introduced since then.[19]

So President Obama ordered the EPA to do what Congress wouldn't.[20] In 2015, after "years of unprecedented outreach

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filibuster. But those twenty-four states equal 60% of the population. So the Senate's equal-state representation was critical. If representation were proportional to population, the climate bill would have been more likely to pass. *Roll Call Vote 110th Congress – 2nd Session,* U.S. SENATE, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=2&vote=00145#state.

[19] *See, e.g.*, American Clean Energy and Security Act, H.R. 2454, 111th Cong. (2009); Integrated Energy Systems Act, S. 2702, 116th Cong. (2019); Clean Industrial Technology Act, S. 2300, 116th Cong. (2019); Advancing Grid Storage Act, H.R. 7313, 115th Cong. (2018); Climate Risk Disclosure Act, S. 3481, 115th Cong. (2018); American Energy and Conservation Act, S. 3110, 114th Cong. (2016); Climate Solutions Commission Act, H.R. 6240, 114th Cong. (2016); Super Pollutants Act, S. 2911, 113th Cong. (2014); American Renewable Energy and Efficiency Act, H.R. 5301, 113th Cong. (2014); End Polluter Welfare Act, S. 3080, 112th Cong. (2012); Save Our Climate Act, H.R. 3242, 112th Cong. (2011); Carbon Dioxide Capture Technology Prize Act, S. 757, 112th Cong. (2011); Clean Energy Standard Act, S. 20, 111th Cong. (2010).

[20] Evan Lehmann & Nathanael Massey, *Obama Warns Congress to Act on Climate Change, or He Will*, SCIENTIFIC AMERICAN (Feb. 13, 2013), https://www.scientificamerican.com/article/obama-warns-congress-to-act-on-climate-change-or-he-will/ ("'But if Congress won't act soon to protect future generations, I will,' Obama said. 'I will direct my Cabinet to come up with executive actions we can take, now and in the future, to reduce pollution, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy.'").

and public engagement"[21] — including 4.3 million public comments[22] (about 4.25 million more than in *Massachusetts v. EPA*)[23] — the EPA promulgated a rule aimed at "leading global efforts to address climate change."[24]

Entitled the Clean Power Plan, the EPA's rule used the Clean Air Act's § 111 to set limits for carbon emissions that would likely be impossible to achieve at individual coal-fired power plants because of costs, unavailable technologies, or a need to severely reduce usage.[25] In that sense, the limits required generation shifting: shifting production from coal-fired power plants to facilities that use natural gas or renewable resources.

To be clear, the 2015 Rule did not expressly say, "Power plants must adopt off-site solutions." But it did set strict emission limits in part by considering off-site solutions. And those emission limits would likely have been unachievable or too costly to meet if off-site solutions were off the table.

A political faction opposed generation shifting. It challenged the 2015 Rule in this Court, arguing that § 111 does not allow the EPA to consider off-site solutions when determining the best system of emission reduction. The faction included about twenty-four states, represented by many

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[21] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

[22] *Id.*

[23] 549 U.S. at 511.

[24] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

[25] Respondents' Br. at 32-37. For the codified text of § 111(d), see the first footnote of this opinion.

Senators who opposed the 2009 legislation.[26] Conversely, a political faction of about eighteen states defended the rule. Many of their Senators had supported the stymied legislation.[27]

At that litigation's outset, our Court refused to stay the rule's implementation.[28] But in an unprecedented intervention, the Supreme Court did what this Court would not.[29] And through its stay, the Supreme Court implied that the challengers would likely succeed on the case's merits.[30]

Taking the Supreme Court's not-so-subtle hint, in 2019 President Trump's EPA repealed the 2015 Rule and issued the Affordable Clean Energy Rule. Like the rule it replaced, the 2019 Rule relies on the Clean Air Act's § 111 to reduce carbon emissions. But unlike its predecessor, the 2019 Rule did not include generation shifting in its final determination of the best system of emission reduction.

A new faction then challenged the 2019 Rule. It looked a lot like the faction that had defended the 2015 Rule. Arrayed against that faction were many states and groups that had opposed the old rule. And so once again, politically diverse

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[26] *See* Legislative Hearing on S. 1733, Clean Energy Jobs and American Power Act Before the Committee on Environment and Public Works, 111th Cong. (2009) (For example, Senators from Oklahoma, Ohio, Wyoming, and Louisiana expressed opposition or concern about the legislation.).

[27] *See id.* (For example, Senators from California, Massachusetts, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, and Maryland expressed support for the legislation.).

[28] *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Jan. 21, 2016) (per curiam) (order).

[29] *West Virginia v. EPA*, 136 S. Ct. 1000 (2016) (mem.).

[30] *See Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008).

states and politically adverse special interest groups brought their political brawl into a judiciary designed to be apolitical.

In this latest round, the briefing's word count exceeded a quarter of a million words. The oral argument lasted roughly nine hours. The case's caption alone runs beyond a dozen pages. And yet, in all that analysis, hardly any of the dozens of petitioners or intervenors defending the 2015 Rule make a serious and sustained argument that § 111 includes a clear statement unambiguously authorizing the EPA to consider a system of emission reduction that includes off-site solutions or that § 111 otherwise satisfies the major-rules doctrine's clear-statement requirement. Neither does the EPA.

In light of that,[31] I doubt § 111 authorizes the 2015 Rule — arguably one of the most consequential rules ever proposed by an administrative agency:

- It required a "more aggressive transformation in the domestic energy industry," marking for President Obama a "major milestone for his presidency."[32]
- It aspired to reduce that industry's carbon emissions by 32 percent — "equal to the annual emissions from more than 166 million cars."[33]

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[31] *Cf.* ARTHUR CONAN DOYLE, *Silver Blaze*, *in* THE COMPLETE SHERLOCK HOLMES 312, 325 (2009) ("Before deciding that question I had grasped the significance of the silence of the dog, for one true inference invariably suggests others.").

[32] J.A. 2076 (White House Fact Sheet).

[33] *FACT SHEET: Clean Power Plan By The Numbers*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-clean-power-plan-numbers.html; *What Is the Clean Power Plan?*, NATIONAL RESOURCES DEFENSE COUNCIL, INC. (Sept. 29, 2017), https://www.nrdc.org/stories/how-clean-power-plan-works-and-why-it-

- Leaders of the environmental movement considered the rule "groundbreaking,"[34] called its announcement "historic,"[35] and labeled it a "critically important catalyst."[36]

The potential costs and benefits of the 2015 Rule are almost unfathomable. Industry analysts expected wholesale electricity's cost to rise by $214 billion.[37] The cost to replace shuttered capacity? Another $64 billion.[38] ("A billion here, a billion there, and pretty soon you're talking real money."[39])

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matters#:~:text=According%20to%20EPA%20projections%2C%20by,nationally%2C%20relative%20to%202005%20levels.&text=The%20shift%20to%20energy%20efficiency,its%20electricity%20bills%20in%202030 ("According to EPA projections, by 2030, the Clean Power Plan would cut the electric sector's carbon pollution by 32 percent nationally, relative to 2005 levels.").

[34] *Save the Clean Power Plan*, NATIONAL RESOURCES DEFENSE COUNCIL, INC., https://www.nrdc.org/save-clean-power-plan.

[35] *The Clean Power Plan*, ENVIRONMENTAL DEFENSE FUND, https://www.edf.org/clean-power-plan-resources.

[36] Press Release, Michael Brune, Sierra Club Executive Director, *Repealing the Clean Power Plan Will Threaten Thousands of Lives* (Oct. 9, 2017), https://www.sierraclub.org/press-releases/2017/10/repealing-clean-power-plan-will-threaten-thousands-lives.

[37] *EPA's Clean Power Plan An Economic Impact Analysis*, NMA, 2, http://nma.org/attachments/article/2368/11.13.15%20NMA_EPAs%20Clean%20Power%20Plan%20%20An%20Economic%20Impact%20Analysis.pdf.

[38] *Id.*

[39] *Senator Everett McKinley Dirksen Dies*, U.S. SENATE (Sept. 7, 1969), https://www.senate.gov/artandhistory/history/minute/Senator_Everett_Mckinley_Dirksen_Dies.htm; *cf. id.* ("Researchers have been unable to track down the quotation most commonly associated with

True, you can dismiss that research as industry-funded. But the EPA itself predicted its rule would cost billions of dollars and eliminate thousands of jobs.[40]

On the benefits side of the ledger, the White House labeled the 2015 Rule a "Landmark,"[41] and the President called it "the single most important step America has ever taken in the fight against global climate change."[42] With that in mind, calculating the rule's benefits requires a sober appraisal of that fight's high stakes. According to the rule's advocates, victory over climate change will lower ocean levels; preserve glaciers; reduce asthma; make hearts healthier; slow tropical diseases; abate hurricanes; temper wildfires; reduce droughts; stop many floods; rescue whole ecosystems; and save from extinction up to "half the species on earth."[43]

Dirksen. Perhaps he never said it, but the comment would have been entirely in character.").

[40] J.A. 336; *see, e.g.*, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, EPA, 6-25 (Oct. 23, 2015), https://19january2017snapshot.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf.

[41] Fact Sheet: President Obama to Announce Historic Carbon Pollution Standards for Power Plants, THE WHITE HOUSE (Aug. 3, 2015), https://obamawhitehouse.archives.gov/the-press-office/2015/08/03/fact-sheet-president-obama-announce-historic-carbon-pollution-standards.

[42] Andrew Rafferty, *Obama Unveils Ambitious Plan to Combat Climate Change*, NBC NEWS (Aug. 3, 2015, 3:05 PM), https://www.nbcnews.com/politics/barack-obama/obama-unveils-ambitious-plan-combat-climate-change-n403296.

[43] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html; Al Gore, *Al Gore: The Climate Crisis Is the Battle of Our Time, and We Can Win*, N.Y. TIMES (Sept. 20, 2019), https://www.nytimes.com/2019/09/20/opinion/al-gore-

These are, to put it mildly, serious issues. Lives are at stake. And even though it's hard to put a dollar figure on the net value on what many understandably consider invaluable, the EPA tried: $36 billion, it said, give or take about a $10-billion margin of error.[44]

So say what you will about the cost-benefit analysis behind generation shifting, it's hardly a minor question. Minor questions do not forestall consequences comparable to "the extinction event that wiped out the dinosaurs 65 million years ago."[45] Minor questions are not analogous to "Thermopylae, Agincourt, Trafalgar, Lexington and Concord, Dunkirk, Pearl Harbor, the Battle of the Bulge, Midway and Sept. 11."[46] Minor rules do not inspire "years of unprecedented outreach and public engagement."[47] Minor rules are not "the single most

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climate-change.html; *Effects of Climate Change*, WORLD WILDLIFE FUND, https://www.worldwildlife.org/threats/effects-of-climate-change.

[44] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

[45] AN INCONVENIENT TRUTH (Lawrence Bender Productions, 2006) ("Global warming, along with the cutting and burning of forests and other critical habitats, is causing the loss of living species at a level comparable to the extinction event that wiped out the dinosaurs 65 million years ago. That event was believed to have been caused by a giant asteroid. This time it is not an asteroid colliding with the Earth and wreaking havoc: it is us.").

[46] Al Gore, *Al Gore: The Climate Crisis Is the Battle of Our Time, and We Can Win*, N.Y. TIMES (Sept. 20, 2019), https://www.nytimes.com/2019/09/20/opinion/al-gore-climate-change.html; *see id.* ("This is our generation's life-or-death challenge.").

[47] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

important step America has ever taken in the fight against global climate change."[48] Minor rules do not put thousands of men and women out of work.[49] And minor rules do not calculate $10 billion in net benefits as their margin of error.[50]

Rather, the question of how to make this "the moment when the rise of the oceans began to slow and our planet began to heal"[51] — and who should pay for it — requires a "decision[] of vast economic and political significance."[52] That standard is not mine. It is the Supreme Court's. And no cocktail of factors informing the major-rules doctrine can obscure its ultimate inquiry: Does the rule implicate a "decision[] of vast economic and political significance"?

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[48] Andrew Rafferty, *Obama Unveils Ambitious Plan to Combat Climate Change*, NBC NEWS (Aug. 3, 2015, 3:05 PM), https://www.nbcnews.com/politics/barack-obama/obama-unveils-ambitious-plan-combat-climate-change-n403296.

[49] *See, e.g.*, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, EPA, 6-25 (Oct. 23, 2015), https://19january2017snapshot.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf.

[50] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

[51] Barack Obama, *Barack Obama's Remarks in St. Paul*, N.Y. TIMES (June 3, 2008), https://www.nytimes.com/2008/06/03/us/politics/03text-obama.html.

[52] *Utility Air Regulatory Group*, 573 U.S. at 324 (quoting *Brown & Williamson Tobacco*, 529 U.S. at 160) (cleaned up); *see Gonzales v. Oregon*, 546 U.S. 243, 267 (2006) (quoting *Brown & Williamson Tobacco*, 529 U.S. at 160) (cleaned up).

Proponents of the 2015 Rule say it doesn't.[53] They have to. If it did, it's invalid — because a clear statement is missing.[54] And according to the Supreme Court, that is exactly what a major rule requires.

To be sure, if we frame a question broadly enough, Congress will have always answered it. Does the Clean Air Act direct the EPA to make our air cleaner? Clearly yes. Does it require at least some carbon reduction? According to *Massachusetts v. EPA*, again yes.

But *how* should the EPA reduce carbon emissions from power plants? And *who* should pay for it? To those major questions, the Clean Air Act's answers are far from clear.

I admit the Supreme Court has proceeded with baby steps toward a standard for its major-rules doctrine. But "big things have small beginnings."[55] And even though its guidance has been neither sweeping nor precise, the Supreme Court has at least drawn this line in the sand: Either a statute clearly endorses a major rule, or there can be no major rule.[56]

Moreover, if Congress merely *allowed* generation shifting (it didn't), but did not clearly *require* it, I doubt doing so was constitutional. For example, imagine a Congress that says, "The EPA *may* choose to consider off-site solutions for its best system of emission reduction, but the EPA may choose *not* to consider off-site solutions." In that instance, Congress has

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[53] *See* Oral Arg. Tr. at 23 (Counsel for State and Municipal Petitioners on the 2015 Rule: "We do not think it implicates the Major Questions Doctrine here for a couple of reasons.").

[54] *See supra* p. 9.

[55] LAWRENCE OF ARABIA (Columbia Pictures, 1962).

[56] *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 230-31 (1994); *Brown & Williamson Tobacco*, 529 U.S. at 126-27, 133; *Gonzales*, 546 U.S. at 267; *Utility Air Regulatory Group*, 573 U.S. at 322-25.

clearly delegated to the EPA its legislative power to determine whether generation shifting should be part of the best system of emission reduction — a "decision[] of vast economic and political significance."[57]

Such delegation might pass muster under a constitution amended by "moments" rather than the "reflection and choice" prescribed by Article V.[58] But if ever there was an era when an agency's good sense was alone enough to make its rules good law, that era is over.[59]

Congress decides what major rules make good sense. The Constitution's First Article begins, "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."[60] And every "law" must "pass[] the House of Representatives and the Senate" and "be presented to the President."[61] Thus, whatever multi-billion-dollar regulatory

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[57] *Utility Air Regulatory Group*, 573 U.S. at 324 (2014) (quoting *Brown & Williamson Tobacco*, 529 U.S. at 160) (cleaned up); *see also Gonzales*, 546 U.S. at 267 (quoting *Brown & Williamson Tobacco*, 529 U.S. at 160).

[58] *See* U.S. CONST. art. V; *compare* BRUCE ACKERMAN, *We the People: Foundations* 22 (1991) ("moments") *with* MICHAEL S. GREVE, *The Upside-Down Constitution* 13 (2012) ("reflection and choice") (quoting The FEDERALIST No. 1, at 3-7 (A. Hamilton) (J. Cooke ed., 1961)).

[59] *See, e.g.*, *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1358-59 (2018) ("The Director may (today) think his approach makes for better policy, but policy considerations cannot create an ambiguity when the words on the page are clear. Neither may we defer to an agency official's preferences because we imagine some hypothetical reasonable legislator would have favored that approach. Our duty is to give effect to the text that *actual* legislators (plus one President) enacted into law.") (cleaned up).

[60] U.S. CONST. art. I, § 1.

[61] *Id.* § 7.

power the federal government might enjoy, it's found on the open floor of an accountable Congress, not in the impenetrable halls of an administrative agency — even if that agency is an overflowing font of good sense.[62]

Over time, the Supreme Court will further illuminate the nature of major questions and the limits of delegation. And under that caselaw, federal regulation will undoubtedly endure. So will federal regulators. Administrative agencies are constitutional, and they're here to stay.[63]

Beyond that, I leave it for others to predict what the Supreme Court's emerging jurisprudence may imply for those agencies' profiles. Here, regardless of deference and delegation doctrines, the regulation of coal-fired power plants under § 111 is invalid for a more mundane reason: A 1990 amendment to the Clean Air Act forbids it.

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[62] *See id.*; *id.* § 1; *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892); *Gundy v. United States*, 139 S. Ct. 2116, 2130-31 (2019) (Alito, J., concurring in the judgment); *see generally* MIKE LEE, *Our Lost Constitution* (2015); PHILIP HAMBURGER, *Is Administrative Law Unlawful?* (2014); Cody Ray Milner, Comment, *Into the Multiverse: Replacing the Intelligible Principle Standard With a Modern Multi-Theory of Nondelegation*, 28 GEO. MASON L. REV. 395 (2020); *cf. Talk America, Inc. v. Michigan Bell Telephone Co.*, 564 U.S. 50, 68 (2011) (Scalia, J., concurring) ("When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty . . . .") (quoting MONTESQUIEU, *Spirit of the Laws* bk. XI, ch. 6, pp. 151-52 (O. Piest ed., T. Nugent transl. 1949)); *In re Aiken County*, 725 F.3d 255, 264 (D.C. Cir. 2013) (same).

[63] *Gundy*, 139 S. Ct. at 2145 (Gorsuch, J., dissenting) ("Nor would enforcing the Constitution's demands spell doom for what some call the administrative state.") (cleaned up).

II.

The Clean Air Act Amendments of 1990 prohibit the EPA from subjecting power plants to regulation under § 111 if they are already regulated under § 112. The 2015 Rule and the 2019 Rule rely on § 111 for the authority to regulate coal-fired power plants. Because the EPA already regulates those coal-fired power plants under § 112, the rules are invalid.

A.

Before 1990, the Clean Air Act's § 112 told the EPA to create a list of hazardous air pollutants. Section 112 directed the EPA to regulate the pollutants on that list. And § 111 provided authorization to regulate pollutants *not* on that list.

Carbon is not on the § 112 list. So, under the pre-1990 scheme, the EPA could regulate carbon under § 111.

But Congress amended § 112 in 1990. Rather than just telling the EPA to make a § 112 list of pollutants, Congress created its own § 112 list.

That same year, Congress also amended § 111. As a result, the codified version of § 111 prohibits the regulation of pollutants "emitted from a *source category* which is regulated under [§ 112]."[64]

Coal-fired power plants are a source regulated under § 112.[65] Therefore, under the codified version of the Clean Air Act, coal plants cannot be regulated under § 111. And since the 2015 Rule and the 2019 Rule use § 111 to regulate carbon emitted from coal plants, those rules purport to do what the codified version of § 111 says the EPA cannot.

But that is not the whole story. Congress's Office of the Law Revision Counsel codifies statutes. And when it

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[64] 42 U.S.C. § 7411(d) (emphasis added).

[65] Their mercury emissions are regulated under § 112.

mistakenly codifies text different from the Statutes at Large, the Statutes at Large controls.[66] And the Statutes at Large differs from the codified text here.

The question concerns two amendments, one from each house of Congress, which both ended up in the final bill.[67]

Under the House Amendment:

> *The Administrator shall prescribe regulations . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or* ***emitted from a source category which is regulated under section 112*** *[of the Clean Air Act.]*[68]

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[66] *Cheney Railroad Co. v. Railroad Retirement Board*, 50 F.3d 1071, 1076 (D.C. Cir. 1995); *see also United States National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 448 & n.3 (1993).

[67] The section, before the 1990 Amendments, read:

> The Administrator shall prescribe regulations which shall establish a procedure . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) or *7412(b)(1)(A) of this title . . . .*

42 U.S.C. § 7411(d)(1) (1988) (emphasis added).

[68] Pub. L. No. 101-549, § 108(g), 104 Stat. 2399, 2467 (1990) (emphasis added); 42 U.S.C. § 7411(d)(1).

Under the Senate Amendment:

> *The Administrator shall prescribe regulations . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or* ***112(b)*** *[of the Clean Air Act.]*[69]

Let's compare those two versions with the most relevant text bolded, the divergent text underlined, and the other text struck through.

House Version:

> ***The Administrator shall prescribe regulations*** ~~*. . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source*~~ ***for any air pollutant*** ~~*(i) for which air quality criteria have not been issued or*~~ ***which is not*** ~~*included on a list published under section 7408(a) of this title or*~~ ***<u>emitted from a source category which is regulated under section 112</u>*** . . . .

Senate Version:

> ***The Administrator shall prescribe regulations*** ~~*. . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source*~~ ***for any air pollutant*** ~~*(i) for*~~

[69] Pub. L. No. 101-549, § 302(a), 104 Stat. 2399, 2574 (1990) (emphasis added).

> ~~*which air quality criteria have not been issued or*~~ ***which is not included on a list published under*** ~~*section 7408(a) of this title or*~~ ***112(b)*** . . . .

Finally, let's look at only the most relevant text.

House:

> ***The Administrator shall prescribe regulations for any air pollutant which is not emitted from a source category which is regulated under section 112.***

Senate:

> ***The Administrator shall prescribe regulations for any air pollutant which is not included on a list published under 112(b).***

To sum up so far, in my view:

- **The House** said the EPA can't use § 111 to regulate pollutants emitted from a source category regulated under § 112.[70]
    - **Coal-fired power plants** are a source category regulated under § 112.
- **The Senate** said the EPA can't use § 111 to regulate pollutants published under § 112.
    - **Carbon** is not a pollutant published under § 112.

Some parties argue the House and Senate Amendments conflict with each other or otherwise produce an absurd result. Others say they don't. In my view, it doesn't matter. If there's

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[70] The EPA adopts a different interpretation of the House Amendment. That interpretation is addressed below in Part II.C.

a conflict, the House Amendment controls. And if there's no conflict, the Senate Amendment takes nothing away from the House Amendment. In *either* scenario — conflict or no conflict — regulation of coal-fired power plants under § 111 is invalid.

B.

Let's start with the first scenario: Assume the two amendments conflict.[71] If that creates an absurd result, "a mistake of expression (rather than of legislative wisdom) [may have] been made."[72] Such a mistake of expression — a "scrivener's error" — is typically viewed as a typo.[73] Where the reading "makes entire sense grammatically but produces a disposition that makes no substantive sense," a "drafter's error" may exist.[74] That said, the distinction between a scrivener's error and a drafter's error "is generally not a principled one."[75] Here, the Senate and House Amendments do not have obvious typos or mistakes, but some may think that including both in the statute "makes no substantive sense" — in the same way

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[71] *Cf.* 70 Fed. Reg. 15,994, 16,030-32 (Mar. 29, 2005) ("EPA is therefore confronted with the highly unusual situation of an enacted bill signed by the President that contains two different and inconsistent amendments to the same statutory provision.").

[72] Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws, in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 20 (Amy Gutmann ed., 1997); *see also West Virginia v. EPA*, No. 15-1363, Oral Arg. Tr. at 111 (Kavanaugh, J.) ("When [a conflict] happens[,] you [may] have a scrivener's error.").

[73] *See* ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 234 (2012) (quoting Daniel A. Farber, *Statutory Interpretation and Legislative Supremacy*, 78 Geo. L.J. 281, 289 (1989)).

[74] *Id.* at 235.

[75] *Id.*

that a single order to "always drive fast" and "never drive fast" makes no substantive sense.

In these rare circumstances, judges may read the text in a way that accounts for these errors. In doing so, "we are not revising the apparent meaning of the text."[76] Instead, we give the text "the meaning that it would convey to a reasonable person, who would understand that misprints had occurred."[77] But the "meaning genuinely intended but inadequately expressed must be absolutely clear; otherwise we might be rewriting the statute rather than correcting a technical mistake."[78]

How then to discover the "meaning genuinely intended"?

Some might say "defer to the EPA" because of the text's ambiguity. But unintentional ambiguity from a drafter's error is nothing like the intentional ambiguity that typically receives *Chevron* deference. *Chevron* applies to deliberate gaps for an

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[76] *Id.*; *see also id.* at 234 (quoting *Grey v. Pearson*, [1857] 6 H.L. Cas. 61, 106 (per Lord Wensleydale)) (cleaned up).
[77] *Id.* at 235.
[78] *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 82 (1994) (Scalia, J., dissenting).

agency to fill.[79] So deference is arguably faithful to a statute's meaning — at least in theory.[80]

In contrast, drafter's errors are accidents. So there's no reason to believe deference was "genuinely intended." And to the extent an office or agency with expertise is entitled to deference here — none is[81] — Congress's Office of the Law Revision Counsel is the leading candidate. Its whole job is to produce the United States Code, and it dismissed the Senate Amendment as a drafter's error.

Others might say the default should be freedom from regulation when a drafter's error creates ambiguity over an agency's authority to promulgate a major rule. After all, if Congress doesn't clearly endorse a major regulation, there can be no major regulation.[82]

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[79] *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 862 (1984); *cf. Pereira v. Sessions*, 138 S. Ct. 2105, 2121 (2018) (Kennedy, J., concurring) ("Given the concerns raised by some Members of this Court it seems necessary and appropriate to reconsider, in an appropriate case, the premises that underlie *Chevron* and how courts have implemented that decision. The proper rules for interpreting statutes and determining agency jurisdiction and substantive agency powers should accord with constitutional separation-of-powers principles and the function and province of the Judiciary.") (cleaned up).

[80] *But see Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1153 (10th Cir. 2016) (Gorsuch, J., concurring) ("The fact is, *Chevron*'s claim about legislative intentions is no more than a fiction — and one that requires a pretty hefty suspension of disbelief at that.").

[81] *Ganem v. Heckler*, 746 F.2d 844, 851 (D.C. Cir. 1984) ("[T]he changes made by the codifiers, whose choice, made without the approval of Congress[,] should be given no weight, are of no substantive moment.") (cleaned up).

[82] *See MCI Telecommunications*, 512 U.S. at 230-31; *Brown & Williamson Tobacco*, 529 U.S. at 126-27, 133; *Gonzales*, 546 U.S. at 267; *Utility Air Regulatory Group*, 573 U.S. at 322-25.

But as with *Chevron*, the major-rules doctrine draws *meaning* from ambiguity: Because Congress does not hide elephants in mouseholes, we presume the absence of clarity means Congress intentionally chose not to endorse a major regulation. So as with *Chevron*'s premise, the premise of the major-rules doctrine is inapplicable to a drafter's error. Here, to the extent an elephant's in a mousehole, we don't know whether the misprint is the mousehole or the elephant.

That leaves us with a third option: inquiring into legislative history. True, as a general matter, courts should reject any significant reliance on legislative history. Hamilton did.[83] So did Marshall.[84] And Madison.[85] And Story.[86] "From the beginnings of the republic, American law followed what is known as the 'no-recourse doctrine' — that in the interpretation of a text, no recourse may be had to legislative history."[87] And although many judges abandoned the no-recourse doctrine by the second half of the twentieth century,[88] leading textualists like Justice Scalia have made important progress in reviving it.

But "[w]hen you have a scrivener's error[,] everyone, including Justice Scalia, would look at the legislative history."[89] Indeed, he "believed that the *only* time it was

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[83] ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 370 (2012).
[84] *Id.* at 370-71.
[85] *Id.* at 371.
[86] *Id.* at 371-72.
[87] *Id.* at 369.
[88] *Id.* at 388.
[89] *West Virginia v. EPA*, No. 15-1363, Oral Arg. Tr. at 111 (Kavanaugh, J.); *see also* John Copeland Nagle, *CERCLA's Mistakes*, 38 WM. & MARY L. REV. 1405, 1414 (1997) ("[E]ven textualists like Justice Scalia acknowledge that the courts can remedy a 'scrivener's error' notwithstanding plain statutory language.").

appropriate for a court to use legislative history was when there was a credible claim of scrivener's error."[90] For example, concurring in the judgment in *Green v. Bock Laundry Machine Co.*, Justice Scalia considered "it entirely appropriate to consult . . . legislative history . . . to verify that what seems . . . an unthinkable disposition . . . was indeed unthought of, and thus to justify a departure from the ordinary meaning of the word" at issue.[91]

So, to recap: (1) The House and Senate Amendments may conflict; (2) if they do, there may have been a drafter's error; and (3) legislative history can illuminate a drafter's error.

What then, if anything, does the legislative history tell us? (Buckle up.)

In 1990, the House passed a bill with many amendments to the Clean Air Act. The Senate passed a different bill. A Conference Committee reconciled them. But it made (at least) *two* drafter's errors — assuming again our two amendments conflict.

First, the Conference Committee put both the House and Senate Amendments in the Conference Report, which became the final bill.[92]

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[90] Megan McDermott, *Justice Scalia's Bankruptcy Jurisprudence: The Right Judicial Philosophy for the Modern Bankruptcy Code?*, 2017 UTAH L. REV. 939, 974 (2017) (emphasis added).

[91] 490 U.S. 504, 527 (1989) (Scalia, J., concurring in the judgment).

[92] The Conference Report says "[t]hat the Senate recede[s] from its disagreement to the amendment of the House to the text of the bill and agree[s] to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following: . . . Sec. 108. Miscellaneous provisions." H.R. Rep. No. 101-952, 101st Cong., at 1 (1990) (cleaned up). Section 108(g) under "Miscellaneous provisions" was the House Amendment that

Second, the Conference Committee botched the "Joint Explanatory Statement of the Committee of Conference."[93]

The Joint Statement said, "The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text."[94] That "amendment" refers to the House's entire set of amendments to the Clean Air Act. Clear enough so far.

The Joint Statement then said, "The Senate recedes from its disagreement to the amendment of the House . . . ."[95] Again, that seems straightforward.

But the Joint Statement didn't stop there. The full sentence excerpted just above says:

> *The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment.*[96]

That is drivel. The Senate recedes with an amendment? What amendment? And how is that receding? And did the House recede to the Senate's amendment to the House's amendment that the Senate receded to?

The next day, the bill's Senate Managers issued a statement attempting to clarify the previous day's materials.

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struck "or 112(b)(1)(A)" and inserted "or emitted from a source category which is regulated under section 112." *Id.* at 73. But later in the report we find the Senate's original proposed amendment — replacing "112(b)(1)(A)" with "112(b)." *Id.* at 183. So the Senate says it receded to the House, and yet we still see the Senate's original language in the document.

[93] *Id.* at 335-55.

[94] *Id.* at 335.

[95] *Id.*

[96] *Id.*

The statement notes that for two unrelated portions of the § 111 amendments, the House receded to the Senate.[97] But it said the Senate receded to the House regarding all other § 111 changes, including the change at issue in this case.[98]

To the extent a statement by Senate Managers can ever clear up a question of statutory meaning — count me skeptical[99] — theirs did.

Here's where that leaves me. I'm frankly *not* convinced the House and Senate Amendments are the product of a drafter's error. But *if* they are, the most lucid piece of legislative history says the Senate intended to recede to the House.

That would leave the House Amendment as the last man standing. And under the House Amendment, the EPA can't regulate air pollutants from coal-fired power plants under § 111 when the plants are already regulated under § 112. Therefore, if the House and Senate Amendments conflict, the 2015 Rule and the 2019 Rule are invalid.[100]

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[97] *Chafee-Baucus Statement of Senate Managers, S. 1630, the Clean Air Act Amendments of 1990*, 136 Cong. Rec. 36007, 36067 (Oct. 27, 1990).

[98] *Id.* The full sentence about the two amendments at issue here reads: "*Conference agreement*. The Senate recedes to the House except that with respect to the requirement regarding judicial review of reports, the House recedes to the Senate and with respect to transportation planning, the House recedes to the Senate with certain modifications." In other words, except for judicial review of reports (immaterial here) and transportation planning (immaterial here), the Senate receded to the House.

[99] *Environmental Defense Fund, Inc. v. EPA*, 82 F.3d 451, 460 n.11 (D.C. Cir. 1996).

[100] The EPA doesn't like that result. For thirty years it has either ignored or misconstrued the House Amendment. But the EPA's

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As for the second (and more likely) of the two scenarios: Assume the House and Senate Amendments do *not* conflict. In that case, we don't strike the Senate Amendment as a drafter's error.[101] But even then, the House Amendment retains its full effect.

Recall that each amendment does two things. First, it creates a category of air pollutants. And second, it excludes that category from regulations authorized under § 111.

For the House Amendment, that category covers any pollutant "emitted from a source category which is regulated under section 112." And for the Senate Amendment, that category covers any pollutant "published under section . . . 112(b)."

So to see what's in the House Amendment's category, you'd start by making a list of every source regulated under § 112. As far as § 111 regulation goes, any air pollutants from those sources — including coal-fired power plants — are forbidden fruit under the House Amendment.

To create the Senate Amendment's list, you'd simply pull the 180 or so pollutants from § 112(b), as modified by the EPA since 1990. As far as § 111 regulation goes, those pollutants

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long-running error is no reason to ignore plain text. To the extent I glean anything from the EPA's thirty-year mistake, it's that the EPA might be entitled to less deference than it thinks it deserves.

[101] For the reader's convenience, here again is the codified version of § 111(d): "The Administrator shall prescribe regulations which shall establish a procedure . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for **any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under [§ 108(a)] or emitted from a source category which is regulated under [§ 112]** . . . ." (emphasis added).

— mercury compounds, asbestos, and more than 180 others — are forbidden fruit under the Senate Amendment.[102]

In general, the House Amendment sweeps more broadly than the Senate Amendment. For example, the House Amendment's list includes pollution from coal-fired power plants, since they are regulated for mercury. So under the House Amendment, § 111 cannot be used to regulate coal-fired power plants at all.

In contrast, the Senate Amendment's list includes mercury, but it does not include *all* other pollution from sources that emit mercury. So under the Senate Amendment, § 111 cannot be used to regulate coal-fired power plants' emissions of mercury. But the Senate Amendment does not by itself stop the EPA from using § 111 to regulate coal-fired power plants' emissions of pollutants like carbon, since carbon isn't on the Senate Amendment's list.

That the House Amendment generally sweeps more broadly than the Senate Amendment, however, does not mean that fidelity to the House Amendment fails to give full effect to the Senate Amendment. For example, imagine two parents choosing a name for their child. The father says, "There's no way we're naming our baby after a president from Virginia." And the mother says, "There's no way we're naming our baby after *any* president."

Just like the House and the Senate each took certain regulations off § 111's table, the mother and father have each taken certain names off the table. And just as the House Amendment excludes from § 111 every regulation excluded by

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[102] *Initial List of Hazardous Air Pollutants with Modifications*, EPA, https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications.

the Senate Amendment (and then some), the mother has said no way to every name excluded by the father (and then some).

When you give full effect to the mother's no-way list, you are not ignoring the father's no-way list — because the father's list only *excludes* names and thus does not require the *inclusion* of any names. And for the same reason, when you give full effect to the father's list, you are not ignoring the mother's — because the mother's no-way list does not require the inclusion of names excluded by the father.

Like the father's list, the Senate Amendment has a lot to say about what's *excluded* from § 111. But like the father's list, the Senate Amendment says nothing about what's *included*. So when the House Amendment excludes coal-fired power plants from § 111's scope, it doesn't ignore the Senate Amendment. It supplements it — by excluding from § 111's scope a category of regulations not already excluded by the Senate Amendment.

That's the situation that will occur most often — air pollutants excluded from § 111 regulation because they're on the Senate Amendment's list will also be excluded from § 111 regulation because they're on the House Amendment's list.

But there may exist situations, at least in theory, when only the Senate Amendment does any work.

For example, consider a hazardous air pollutant listed under § 112 but "emitted by sources that Section [112] does not reach."[103] That pollutant is barred from § 111 regulation by the Senate Amendment (because it's a *pollutant* listed under § 112), but it is arguably not barred by the House Amendment (because it's emitted from a *source* not regulated under § 112).

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[103] Majority Op. at 119-20 n.19.

In that scenario, it's possible only the Senate Amendment would bar § 111 regulation.[104]

In other words, these § 111 exclusions might form a Venn diagram: Some air pollutants are excluded from § 111 regulation only because of the House Amendment (like carbon from coal-fired power plants), some pollutants are only excluded because of the Senate Amendment (as in the hypothetical I just described), and some pollutants are excluded because of both amendments (like mercury from coal-fired power plants). Recognizing *both* amendments as operative gives "maximum possible effect" to each.[105]

The EPA says *Chevron* applies to this question. Even so, the outcome is the same. At *Chevron* step one, the plain text of the Senate Amendment takes nothing away from the plain text of the House Amendment and vice versa. And because the House Amendment expressly precludes the regulation of coal-fired power plants under § 111, the plain text precludes the 2015 Rule and the 2019 Rule — both of which depended on § 111 to regulate coal-fired power plants.

In *American Electric Power Co. v. Connecticut*, the Supreme Court agreed with this reading. It said the "EPA may not employ § [111(d)] if existing stationary sources of the pollutant in question are regulated under the national ambient

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[104] As another theoretical example, consider a source that emits a pollutant on § 112's list and assume the EPA is *required* to regulate that source based on § 112's parameters. But now imagine that, notwithstanding that requirement, the EPA has not *yet* regulated the source. After all, sometimes these things take time. In that situation too, the Senate Amendment might exclude from § 111 regulation pollutants that the House Amendment might not (yet).

[105] *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 870 (D.C. Cir. 1979).

air quality standard program . . . or the 'hazardous air pollutants' program, § [112]."[106]

The EPA adopts a different approach to the House Amendment. In "any air pollutant . . . emitted from a source category which is regulated under section 112," the EPA reads the phrase "which is regulated under section 112" to modify "air pollutant," rather than "source category." So it would exclude from § 111's scope only an "air pollutant . . . which is regulated under § 112":

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[106] *American Electric Power Co. v. Connecticut*, 564 U.S. 410, 424 n.7 (2011) (citing § 7411(d)(1)). The EPA notes that this footnote was dicta and that it conflicted with national ambient air quality standard regulations at the time. But the EPA can't have it both ways: It can't dismiss an inconvenient part of *American Electric Power* that is directly on point and then *rely* on other parts of that case where the precise meaning and contours of § 111(d) were not at issue.

As for *American Electric Power*'s holding, it depended on the Supreme Court's understanding that § 111(d) "speaks directly" to carbon emissions from fossil-fuel plants. *Id.* at 424. I agree that § 111(d) "speaks directly" to whether the EPA can or cannot regulate carbon from coal-fired power plants: The provision directly says that the EPA can regulate pollutants from existing sources *unless* the EPA already regulates those sources under § 112. *Compare id. with id.* at 424 n.7.

> ***The Administrator shall prescribe regulations*** ~~*. . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source*~~ ***for any air pollutant*** ~~*(i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or emitted from a source category*~~ ***which is regulated under section 112*** . . . .

To get to the EPA's preferred reading — to make "which is regulated by section 112" modify "air pollutant" — the EPA needs to read into § 111(d)(1)(A)(i) a triplet of three whiches:[107]

> *The Administrator shall prescribe regulations . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for* <u>*any air pollutant*</u> *[1]* ***for which*** *air quality criteria have not been issued* ***or*** *[2]* ***which*** *is not included on a list published under § 108(a) or emitted from a source category [3]* ***which*** *is [not] regulated under § 112 . . . .*

My alterations — including [1], [2], [3], and [not] — reflect the tripartite division implied by the EPA. But of course the alterations were not in the original. If they were, the EPA's grammatically unconventional reading might work. They're not, so it doesn't.

For four reasons, the EPA's approach is not persuasive.

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[107] *Cf.* WILLIAM SHAKESPEARE, MACBETH act 1, sc. 1.

First, "ordinarily, and within reason, modifiers and qualifying phrases attach to the terms that are nearest."[108] Under that canon, a modifying phrase, such as "which is regulated under section 112," should apply to the closest noun possible — "source category," not "air pollutant."

Second, the EPA all but reads out of § 111 the following words: "emitted from a source category." To be sure, Congress will sometimes "include words that add nothing of substance," so the canon against surplusage has limits.[109] That's why "a court may well prefer ordinary meaning to an unusual meaning that will avoid surplusage."[110] But amputating the words "emitted from a source category" does not clarify § 111's "ordinary meaning." Instead, doing so transforms that meaning.

Third, and most importantly, Congress put a conjunction (**"or"**) between parts one and two of the imagined triplet, but not between parts two and three. If the EPA's triplet exists, Congress's approach to English was, to put it kindly, novel.

In formal English, you usually separate a triplet with a conjunction between the second and third parts. (Life, liberty, **or** property.) Informal English sometimes puts a conjunction between the first and second, *and* between the second and third. (Life **or** liberty **or** property.) Sometimes you see a triplet with no conjunction. (Life, liberty, property.) But you rarely if ever see a triplet's conjunction separate the first and second parts

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[108] *Grecian Magnesite Mining, Industrial & Shipping Co., SA v. Commissioner*, 926 F.3d 819, 824 (D.C. Cir. 2019); *see also Lockhart v. United States*, 136 S. Ct. 958, 962 (2016); ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 144-46 (2012).

[109] ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 176 (2012).

[110] *Id.*

without also separating the second and third parts. (Life **or** liberty property). That's why it's not:

- Stop and drop roll; or
- Red and white blue; or
- Reduce and reuse recycle; or
- Blood and sweat tears; or
- Huey and Dewey Louie.

Thus, the EPA would require us to read into § 111 a triplet written in a way no one writes.[111]

Fourth and finally, the EPA says a plain-text reading of the House Amendment would leave § 111 almost no work to do.

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[111] Whatever else the savings clause in § 112(d)(7) might save, it can't save *that*. *Cf.* 42 U.S.C. § 7412(d)(7) ("No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D, or other authority of this chapter or a standard issued under State authority.").

Note that § 112(d)(7) applies only to requirements "established pursuant to" § 111. And even the EPA says regulations cannot be established pursuant to § 111 if they target pollutants already regulated under § 112. *See also American Electric Power*, 564 U.S. at 424 n.7. So everyone agrees the § 111 amendments exclude *something* from § 111 based on § 112. And § 112(d)(7) does not cover whatever is excluded.

What's more, § 111(d)'s exclusion is more specific than § 112(d)(7)'s generalities, and the specific usually controls the general. *See* ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 183 (2012).

But if so, that was a choice for Congress. After all, the 1990 Clean Air Act Amendments added more than one hundred pollutants to § 112's scope, with a mechanism for the EPA to add even more later.[112] Maybe Congress thought § 111(d) shouldn't be much more than a rarely used gap-filler in light of a beefed up § 112 — at least until Congress passed another law saying otherwise.

Of course, in the end, it doesn't matter what Congress was *thinking*.[113] "It is the *law* that governs, not the intent of the lawgiver."[114] That's because, among other reasons, "it is simply incompatible with democratic government, or indeed, even with fair government, to have the meaning of a law determined by what the lawgiver meant, rather than by what the lawgiver promulgated."[115]

Thus, an oddity of timing doesn't trigger *Chevron* deference.[116] Nor does ambiguity arise every time an agency wishes a statutory provision did more work than it does. When statutory text informed by structure and context is clear, "that is the end of the matter."[117]

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[112] Pub. L. No. 101-549, § 301, 104 Stat. 2399, 2532-37 (1990).

[113] *Cf. Gutierrez-Brizuela*, 834 F.3d at 1153 (Gorsuch, J., concurring) ("Trying to infer the intentions of an institution composed of 535 members is a notoriously doubtful business under the best of circumstances.").

[114] Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws, in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 17 (Amy Gutmann ed., 1997).

[115] *Id.*

[116] *Cf.* Public Health & Environmental Respondent-Intervenors' Br. at 10-11.

[117] *Chevron*, 467 U.S. at 842.

* * *

This case touches on some of administrative law's most consequential, unresolved issues. What is the reach of *Massachusetts v. EPA*? What is the meaning of a major question? What are the limits of congressional delegation?

Each of those issues — and a dozen or two more — might have mattered if the EPA had relied on a section of the Clean Air Act other than § 111 to promulgate both rules at issue in this case. But a 1990 amendment to § 111 excluded a category of regulations from § 111's scope. And because that category covers the regulations challenged today, those other legal questions are academic.

Both houses of Congress voted that amendment — the House Amendment — into law. And as explained above, if it conflicts with the Senate-proposed amendment to § 111, the Senate Amendment was a drafter's error.

On the other hand, if the House and Senate Amendments can coexist, the House Amendment simply excludes from § 111's scope a category of regulations in addition to the regulations excluded by the Senate Amendment.

Either way, the law precludes what the House Amendment precludes. And the House Amendment precludes § 111 regulations of coal-fired power plants already covered by § 112.

Therefore, the EPA correctly repealed the 2015 Rule, but its replacement rule improperly applied § 111 to coal-fired power plants already regulated under § 112.

Those conclusions lead to this respectful concurrence in part, concurrence in the judgment in part, and dissent in part.[118]

[118] The majority's thoughtful opinion (I) describes this case's regulatory and procedural history; (II) vacates the 2019 Rule; (III.A) rejects most of the Coal Petitioners' arguments, including their contention that the EPA cannot use § 111 to regulate carbon emissions from power plants already regulated under § 112; (III.B) dismisses the Robinson Petitioners' challenge for lack of standing; (IV) vacates the EPA's implementing regulations for emission guidelines promulgated under § 111(d); (V) describes the remedy; and (VI) concludes. I concur in part of the judgment with respect to Part II, concur with respect to Part III.B, and concur in the judgment with respect to Part IV.

Message

From: POLITICO Pro Energy [alert@email.politicopro.com]
Sent: 1/26/2021 4:52:01 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: EPA yanks rules under review at OMB on biofuel, air pollution, oil dispersants

EPA yanks rules under review at OMB on biofuel, air pollution, oil dispersants

By Alex Guillén

01/26/2021 11:49 AM EST

EPA has withdrawn its remaining regulations under review at the White House's Office of Management and Budget, part of the Biden administration's effort to claw back any pending regulations.

Details: OMB's website now indicates there are no EPA rules under review there. It also lists five rules that were withdrawn as of Monday. The Biden administration likely will pursue some version of these rulemakings in the future, but for now the agency has yanked versions generated under Trump for reconsideration.

These include:

— Renewable Fuel Standard volumes for 2021 and biodiesel volumes for 2022 (Reg. 2060-AU82). EPA faces a statutory deadline to issue these by Nov. 30 of the previous year, but the Trump administration whiffed that deadline , leaving the matter — along with the swirling controversy over small refiner exemptions — up to the Biden administration to handle. The proposal sitting at OMB was written with pre-pandemic assumptions about driving that likely will need a major rewrite.

— A rule to add 1-bromopropane, or 1-BP, to the list of more than 180 hazardous air pollutants regulated under Section 112 of the Clean Air Act (Reg. 2060-AS26). Critics argued the Trump administration dragged its feet on this issue by creating additional regulatory steps instead of just adding 1-BP to the HAP list, the first such time a pollutant has been added to it. The Biden administration may act to speed up that process, though it could still be years before sources like dry cleaners are regulated. EPA is separately considering 1-BP restrictions under the Toxic Substances Control Act.

— A rule governing the use of oil dispersants to clean up spills (Reg. 2050-AH16). Prompted by litigation from green groups that argue dispersants cause more environmental harm than previously thought, the Trump administration last year revived a 2015 Obama-era proposal that amended monitoring requirements for when dispersants are deployed to break up oil in water. However, it is unclear exactly what the final rule would have required.

— A proposal related to establishing baselines for water quality trading programs that could be used by wastewater utilities, factories and other point sources to meet their pollution discharge limits (Reg. 2040-ZA37). Such programs were a priority for the Trump administration's water chief, David Ross, but have been criticized by some green groups who say they can overburden low-income communities and don't guarantee the necessary pollution reductions.

— Guidance related to applications for vessel sewage no-discharge zones under Section 312(f) of the Clean Water Act (Reg. 2040-ZA33).

Previously: EPA had already yanked a proposal to formally find that biomass is carbon neutral when burned for electricity (Reg. 2060-AU03), and guidance related to ozone and fine particulate matter permit modeling.

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Subject: FW: DA's QFR edits from OAR
Attachments: For LAA review- ALL McCabe QFRsResponses.RA.3.11 OAR edits.docx

FYSA

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Cc: Thundiyil, Karen <Thundiyil.Karen@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>
Subject: DA's QFR edits from OAR

Please see the OAR edits to the QFRs attached. Thank you!

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Sent: Friday, March 12, 2021 8:13 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Kim, Eun <Kim.Eun@epa.gov>
Cc: Shoaff, John <Shoaff.John@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>; Edwards, Jonathan <Edwards.Jonathan@epa.gov>; Cherepy, Andrea <Cherepy.Andrea@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Mroz, Jessica <mroz.jessica@epa.gov>; Millett, John <Millett.John@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Olson, Heather <Olson.Heather@epa.gov>
Subject: DA's QFR edits from OAR

Good evening,
Attached is the final OAR word version of the QFRs to be shared with OCIR. Please let us know if you have any questions.
Thank you all so much and have a wonderful weekend!
Kristina

Kristina Sandfoss
Office of Air and Radiation – Office of Air Policy & Program Support
U.S. Environmental Protection Agency Headquarters
1200 Pennsylvania Avenue NW, Washington, DC 20460
202-564-7177 WJC-N 5442R
pronouns: she / her / hers

Message

From: Goffman, Joseph [jgoffman@law.harvard.edu]
Sent: 1/20/2021 4:45:39 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: [EXTERNAL] Re: [ADMINLAW] lots going on but
Attachments: AMERICAN LUNG ASSOCIATION v EPA DC Cir 2021 nondel edit.docx

Joseph Goffman | **Executive Director**
Harvard Law School | Environmental and Energy Law Program
6 Everett Street, Suite 4121 | Cambridge, MA 02138
202.746 4693 | jgoffman@law.harvard.edu
Twitter: **@JosephGoffman**

From: Steve Gold [mailto:stgold@LAW.RUTGERS.EDU]
Sent: Wednesday, January 20, 2021 11:20 AM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: Re: [ADMINLAW] [EXTERNAL] Re: [ADMINLAW] lots going on but

Thanks, colleagues, for an interesting discussion. I have done a quick edit of the opinion for my Administrative Law class, as I intend to teach non-delegation today (skipping all the *Chevron* and major-question stuff for later). I've attached it if anyone wants to use it.

Re: Jonathan Masur's point: the year Kavanaugh's DC Circuit CFPB opinion (and then giant dissent from the en banc majority) came out, I immediately added them to my course and, without the slightest bit of inside knowledge, told my students that the opinions read more like an audition for the Supreme Court than like careful legal analysis. I get the same sense from Judge Walker's dissent.

Best,
Steve

Steve C. Gold
Professor of Law and Judge Raymond J. Dearie Scholar
Rutgers Law School
Rutgers University--Newark
Rutgers, The State University of New Jersey
123 Washington Street
Newark, NJ 07102

From: Jonathan Masur <jmasur@UCHICAGO.EDU>
Sent: Wednesday, January 20, 2021 10:31 AM
To: ADMINLAW@LISTSERV.LSU.EDU <ADMINLAW@LISTSERV.LSU.EDU>
Subject: Re: [ADMINLAW] [EXTERNAL] Re: [ADMINLAW] lots going on but

The approach in Walker's dissent was also advanced by then-Judge Kavanaugh when he sat on the DC Circuit. It would be interesting to try and count how many sitting Justices or members of the DC Circuit currently subscribe to this view. My best guess is that there are 2-4 on each court.

Alison Gocke also has a paper in progress on this subject. The paper isn't posted online yet, but she said that if you email her she'd be happy to send you a copy.

From: Todd Aagaard <aagaard@LAW.VILLANOVA.EDU>
Sent: Wednesday, January 20, 2021 7:14 AM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: Re: [ADMINLAW] [EXTERNAL] Re: [ADMINLAW] lots going on but

As to #2, Cass Sunstein has a recent paper making exactly that observation, fittingly entitled, There Are Two 'Major Question' Doctrines.

From: Owen, Dave <owendave@UCHASTINGS.EDU>
Sent: Tuesday, January 19, 2021 9:49 PM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: [EXTERNAL] Re: [ADMINLAW] lots going on but

A few thoughts in response to David Zaring's points/questions:

1. On reverse *Chevron*: this is one of those cases in which an agency says, "we cannot do X because the statute unambiguously forecloses us from doing so," and the court responds by saying, "you can do X (and we don't need to say whether you *have to* do X) because the statute does afford you that discretion."

2. Judge Walker's concurring and dissenting (mostly dissenting) opinion has a really striking treatment of major questions doctrine. It seems to me, and I wonder if others agree, that we now have two very different versions of major questions doctrine metastasizing through the courts. One version—the Justice-Roberts-*King-v-Burwell* version—requires de novo review when an ambiguous statute raises a major question but does not purport to place a pro-regulatory or anti-regulatory thumb on the scales. The other version—the Walker version—precludes major new regulatory efforts unless a statute clearly and unambiguously authorizes those efforts. There's nothing neutral about it.

   Though he relies heavily on major questions doctrine, Walker never once cites *King v. Burwell*. And if major questions doctrine works the way he says it does, that case clearly was wrongly decided. So he seems to be selecting a version of the doctrine at odds with key Supreme Court precedent.

3. The way Judge Walker decides the case presents a major question also is striking. To assess the costs of greenhouse gas regulation under section 111, he cites industry estimates, which are notoriously likely to be inflated (which he acknowledges but makes no adjustment for). Then, to assess the scale of benefits, he mostly discusses the total benefits of addressing climate change and then only briefly refers to estimated benefits for this particular rule. It's also somewhat odd how much emphasis he gives to the scale of a regulatory program's benefits. The implication is that an agency could invoke an ambiguous statute as authorization for a rule that doesn't really benefit anyone all that much, but that if a rule with the same costs provides huge social benefits, the agency could not lawfully adopt it. That's perverse, to say the least.

It's a dissent, of course. But if this is a preview of major questions doctrine in a conservative judiciary, we'll all have a lot to write about.

Dave

From: Zaring, David <zaring@WHARTON.UPENN.EDU>
Sent: Tuesday, January 19, 2021 9:09 AM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: [ADMINLAW] lots going on but

I was trying to make a little sense out of the DC Circuit decision tossing the Trump EPA's version of the Clean Power Plan. I don't do environmental law except when required to, and this decision – per curiam, 185 pages, a standalone table of contents, and an introduction that didn't explain what the basis of the decision was – makes me kind of glad about that.

https://www.cadc.uscourts.gov/internet/opinions.nsf/6356486C5963F49185258662005677F6/$file/19-1140-1880546.pdf

But I gave it a skim. It appears that the majority thought that EPA's conclusion that the Clean Air Act did not permit the agency to regulate in the way it did in the Clean Power Plan was inconsistent with the act. The CPP I think permitted an aggregation of responses – a state/utility could meet national standards not only by reducing emissions at heavy CO2 emitting plants, but also by establishing that it was shifting to lower CO2 emitting sources. The Trump revision was justified on the basis that the CAA only permits regulation of stationary sources (power plants), and not inferential regulation beyond the smokestack.

A couple of inexpert thoughts:

- The majority is kind of a reverse Chevron? The idea is that the statute permits a wider range of actions than EPA thinks, and EPA is wrong to interpret the statute so narrowly. But it cites Chevron once.
- Classic Trump admin move of replacing a rule not by doing more science or cost-benefit analysis (though they might have done more in the part I skimmed too quickly), but by arguing that it just legally didn't have the right to do the thing the Obama admin did, as William Buzbee has argued IIRC. This also happened with DACA.
- New judge Walker, in concurrence, says that both the Obama and Trump rules would require congressional legislation, they are just too multi-billions big – a full-throated endorsement of the major questions doctrine that will be worth keeping an eye on. He cites Chevron a ton, but probably because it's a precondition to a major questions carveout. And that in turn raised an interesting question regarding what happens if Chevron gets tossed by the Supreme Court in these kinds of cases. Then courts would review agency rules to see if they decided questions that are too important to be decided without Congressional authorization – and that would mean that we'd have an actual reinvigoration of the nondelelgation doctrine, on some other basis than intelligible principle. Remarkable! And I say this as someone sympathetic to major questions constraints (I just don't think, say, the IRS should be able to toggle on or off the capital gains tax/OCC should give Apple and Amazon bank charters by rule).

Anyway, happy to hear what I'm getting wrong, &c.

David

David Zaring
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AMERICAN LUNG ASSOCIATION v. ENVIRONMENTAL PROTECTION AGENCY, No. 19-1140 (D.C. Cir. Jan. 19, 2021)

PER CURIAM. .... The question in this case is whether the Environmental Protection Agency (EPA) acted lawfully in adopting the 2019 Affordable Clean Energy Rule (ACE Rule), 84 Fed. Reg. 32,520 (July 8, 2019), as a means of regulating power plants' emissions of greenhouse gases. It did not. Although the EPA has the legal authority to adopt rules regulating those emissions, the central operative terms of the ACE Rule and the repeal of its predecessor rule, the Clean Power Plan, 80 Fed. Reg. 64,662 (Oct. 23, 2015), hinged on a fundamental misconstruction of Section [111(d)] of the Clean Air Act.....

[In] Massachusetts v. EPA,... the [Supreme] Court confirmed that carbon dioxide and other greenhouse gas emissions constituted "air pollutant[s]" covered by the Clean Air Act.... Given that statutory command, the Supreme Court ruled that the EPA "can avoid taking further action" to regulate such pollution "only if it determines that greenhouse gases do not contribute to climate change" or offers some reasonable explanation for not resolving that question.... Taking up the mantle, the EPA in 2009 found "compelling[]" evidence that emissions of greenhouse gases are polluting the atmosphere and are endangering human health and welfare by causing significant damage to the environment.... Not long thereafter, the Supreme Court ruled that the significant greenhouse gas pollution caused by fossil-fuel-fired power plants is subject to regulation under Section [111] of the Clean Air Act....

In October 2015, the EPA issued greenhouse gas emission standards for new and modified power plants.... The EPA then turned to the regulation of existing power plants.... In the Clean Power Plan, the EPA determined that a combination of three existing methods of emission reduction— which the Plan referred to as building blocks...—formed the "best system of emission reduction," [which is the degree of pollution control required by § 111].

First, the system incorporated heat-rate improvements— that is, technological measures that improve efficiency at coalfired steam power plants and, in that way, reduce the amount of coal that must be burned to produce each watt of electricity to the grid....

Second, the system added the "substitut[ion of] increased generation from lower-emitting existing natural gas combined cycle units for generation from higher-emitting affected steam generating" power plants, which are mostly coal-fired....

Third, the system prioritized the use of electricity generated from zero-emitting renewable-energy sources over electricity from the heavily greenhouse-gas-polluting fossilfuel-fired power plants....

Those second and third methods of emission control are often referred to as "generation shifting" because the reductions occur when the source of power generation shifts from higher-emission power plants to less-polluting sources of energy....

The Clean Power Plan was challenged in this court.... After we heard argument en banc, but before we issued a decision, that litigation was held in abeyance and ultimately dismissed as the EPA reassessed its position.

In 2019, the EPA issued a new rule that repealed and replaced the Clean Power Plan: The Affordable Clean Energy (ACE) Rule.... That Rule is the subject of this litigation.

At the outset, the ACE Rule repealed the Clean Power Plan. The EPA explained that it felt itself statutorily compelled to do so because, in its view, "the plain meaning" of Section [111(d)] "unambiguously" limits the best system of emission reduction to only those measures "that can be put into operation at a building, structure, facility, or installation."... Because the Clean Power Plan's best system was determined by using some emission control measures that the EPA characterized as physically operating off the site of coal-fired power plants—such as some forms of generation shifting and emissions trading—the EPA concluded that it had no choice but to repeal the Plan....

Considering its authority under Section [111] to be confined to physical changes to the power plants themselves, the EPA's ACE Rule determined a new best system of emission reduction for coal-fired power plants only. The EPA left unaddressed in this rulemaking (or elsewhere) greenhouse gas emissions from other types of fossil-fuel-fired power plants, such as those fired by natural gas or oil.... The EPA's proposed system relied solely on heat-rate improvement technologies and practices that could be applied at and to existing coal-fired power plants....

Twelve petitions for review of the ACE Rule were timely filed in this court and consolidated in this case....

[The majority detailed a lengthy analysis of the meaning of § 111 and a number of Supreme Court precedents interpreting the scope of statutory authorization for agency rulemaking, most of which we will study later in the course. The court concluded:] we hold that Section [111(d)] allows the EPA to regulate carbon dioxide emissions from power plants.... The ACE Rule expressly rests on the incorrect conclusion that the plain statutory text clearly foreclosed the Clean Power Plan, so that complete repeal was "the only permissible interpretation of the scope of the EPA's authority under [§ 111]. Because promulgation of the ACE Rule and its embedded repeal of the Clean Power Plan rested critically on a mistaken reading of the Clean Air Act, we vacate the ACE Rule and remand to the Agency....

WALKER, Circuit Judge, concurring in part, concurring in the judgment in part, and dissenting in part: This case concerns two rules related to climate change. The EPA promulgated both rules under § 111 of the Clean Air Act. A major milestone in climate regulation, the first rule set caps for carbon emissions. Those caps would have likely forced shifts in power generation from higher-polluting energy sources (such as coal-fired power plants) to lower-emitting sources (such as natural gas or renewable energy sources). That policy is called generation shifting....

The second rule repealed the first and partially replaced it with different regulations of coal-fired power plants. Dozens of parties have challenged both the repeal and the provisions replacing it....

When the Constitution's ratifiers empowered Congress to legislate on certain matters of national importance, 4 they understood that federal regulation came with risks. For example, Congress might impose widely disbursed [sic] costs to benefit insular groups in a nation of diverse economic and political interests. The framers called those groups factions. To guard against factions, legislation requires

something approaching a national consensus. While a single state's simple majority can often subject that state to "novel social and economic experiments," federal legislation must survive bicameralism and presentment. Only through that process can ideologically aligned states use federal power to impose their will on the unwilling. So too for ideologically aligned environmentalists. Or polluters. Or big tech. Or big labor. Or free traders. Or fair traders. Or farmers. Or fishers. Or butchers. Or bakers.

In that process, each political institution probes legislative proposals from the perspective of different constituencies. The House speaks for the people. The Senate, among other roles, guards the interests of small states. The Electoral College, with representation just short of proportional, strikes a balance between the two. And by staggering elections over two-, four-, and six-year cycles, we further impede fleeting factions from ganging up on small states and unpopular political minorities. The point is: It's difficult to pass laws — on purpose.

This legislative gauntlet sometimes produces unfortunate, even tragic, consequences. Between the 1870s and 1960s, it foreclosed desperately needed civil rights laws. For budget hawks who predict a fiscal crisis, it has blocked entitlement reform. And for those who fear a climate crisis, it has prevented clear congressional guidance on how to cool the planet and who will foot the bill. That, however, is the price we pay for bicameralism and presentment. Major regulations and reforms either reflect a broad political consensus, or they do not become law.

In its clearest provisions, the Clean Air Act evinces a political consensus. For example, according to Massachusetts v. EPA, carbon dioxide is clearly a pollutant, and the Act's § 202 unambiguously directs the EPA to curb pollution from new cars. But for every carbon question answered in that case, many more were not even presented. For example, does the Clean Air Act force the electric-power industry to shift from fossil fuels to renewable resources? If so, by how much? And who will pay for it? Even if Congress could delegate those decisions, Massachusetts v. EPA does not say where in the Clean Air Act Congress clearly did so. In 2009, Congress tried to supply that clarity through new legislation.

The House succeeded. The President supported it. But that effort stalled in the Senate. Since climate change is real, man-made, and important, Congress's failure to act was, to many, a disappointment. But the process worked as it was designed. In general, Senators from small states blocked legislation they viewed as adverse to their voters. And because small states have outsized influence in the Senate, no bill arrived on the President's desk. Nor have dozens of other climate-related bills introduced since then. So President Obama ordered the EPA to do what Congress wouldn't. In 2015, after "years of unprecedented outreach and public engagement" — including 4.3 million public comments … — the EPA promulgated a rule aimed at "leading global efforts to address climate change."

Entitled the Clean Power Plan, the EPA's rule used the Clean Air Act's § 111 to set limits for carbon emissions that would likely be impossible to achieve at individual coal-fired power plants because of costs, unavailable technologies, or a need to severely reduce usage. In that sense, the limits required generation shifting: shifting production from coalfired power plants to facilities that use natural gas or renewable resources. To be clear, the 2015 Rule did not expressly say, "Power plants must adopt off-site solutions." But it did set strict emission limits in part by considering off-site solutions. And those

emission limits would likely have been unachievable or too costly to meet if off-site solutions were off the table. A political faction opposed generation shifting. It challenged the 2015 Rule in this Court, arguing that § 111 does not allow the EPA to consider off-site solutions when determining the best system of emission reduction. The faction included about twenty-four states, represented by many Senators who opposed the 2009 legislation. Conversely, a political faction of about eighteen states defended the rule. Many of their Senators had supported the stymied legislation.

At that litigation's outset, our Court refused to stay the rule's implementation. But in an unprecedented intervention, the Supreme Court did what this Court would not. And through its stay, the Supreme Court implied that the challengers would likely succeed on the case's merits. Taking the Supreme Court's not-so-subtle hint, in 2019 President Trump's EPA repealed the 2015 Rule and issued the Affordable Clean Energy Rule. Like the rule it replaced, the 2019 Rule relies on the Clean Air Act's § 111 to reduce carbon emissions. But unlike its predecessor, the 2019 Rule did not include generation shifting in its final determination of the best system of emission reduction. A new faction then challenged the 2019 Rule. It looked a lot like the faction that had defended the 2015 Rule. Arrayed against that faction were many states and groups that had opposed the old rule. And so once again, politically diverse states and politically adverse special interest groups brought their political brawl into a judiciary designed to be apolitical....

The potential costs and benefits of the 2015 Rule are almost unfathomable. Industry analysts expected wholesale electricity's cost to rise by $214 billion. The cost to replace shuttered capacity? Another $64 billion....

True, you can dismiss that research as industry-funded. But the EPA itself predicted its rule would cost billions of dollars and eliminate thousands of jobs. On the benefits side of the ledger, the White House labeled the 2015 Rule a "Landmark," and the President called it "the single most important step America has ever taken in the fight against global climate change." With that in mind, calculating the rule's benefits requires a sober appraisal of that fight's high stakes. According to the rule's advocates, victory over climate change will lower ocean levels; preserve glaciers; reduce asthma; make hearts healthier; slow tropical diseases; abate hurricanes; temper wildfires; reduce droughts; stop many floods; rescue whole ecosystems; and save from extinction up to "half the species on earth."

These are, to put it mildly, serious issues. Lives are at stake. And even though it's hard to put a dollar figure on the net value on what many understandably consider invaluable, the EPA tried: $36 billion, it said, give or take about a $10- billion margin of error. So say what you will about the cost-benefit analysis behind generation shifting, it's hardly a minor question....

[Relying on a Supreme Court opinion we will study later in the course, Judge Walker concludesdthat § 111 of the Clean Air Act did not authorize a "major" rule like the Clean Power Plan regulation.]

[I]f Congress merely allowed generation shifting (it didn't), but did not clearly require it, I doubt doing so was constitutional. For example, imagine a Congress that says, "The EPA may choose to consider off-site solutions for its best system of emission reduction, but the EPA may choose not to consider off-site solutions." In that instance, Congress has clearly delegated to the EPA its legislative power to determine

whether generation shifting should be part of the best system of emission reduction — a "decision[] of vast economic and political significance." ... [If] ever there was an era when an agency's good sense was alone enough to make its rules good law, that era is over [citing a 2018 Supreme Court decision].

Congress decides what major rules make good sense. The Constitution's First Article begins, "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." And every "law" must "pass[] the House of Representatives and the Senate" and "be presented to the President." Thus, whatever multi-billion-dollar regulatory power the federal government might enjoy, it's found on the open floor of an accountable Congress, not in the impenetrable halls of an administrative agency — even if that agency is an overflowing font of good sense. Over time, the Supreme Court will further illuminate the nature of major questions and the limits of delegation. And under that caselaw, federal regulation will undoubtedly endure. So will federal regulators. Administrative agencies are constitutional, and they're here to stay. Beyond that, I leave it for others to predict what the Supreme Court's emerging jurisprudence may imply for those agencies' profiles.

Message

From: POLITICO Pro Energy [alert@email.politicopro.com]
Sent: 2/1/2021 1:01:28 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Nichols joins think tanks devoted to transportation, China climate policy

Nichols joins think tanks devoted to transportation, China climate policy

By Debra Kahn

02/01/2021 08:00 AM EST

Former California Air Resources Board Chair Mary Nichols is taking leadership roles at a new transportation policy advisory group and a UC Berkeley think tank devoted to China's climate change policies.

After the November election, Nichols was a contender to become President Joe Biden's Environmental Protection Agency administrator before Biden ultimately tapped North Carolina regulator Michael Regan.

Nichols stepped down as CARB chair last month after 13 years leading the country's most aggressive climate and air pollution agency. She will join former Gov. Jerry Brown at the California-China Climate Institute that he founded in 2019, working with the governor who initially appointed her to CARB in 1975 and later became her cap-and-trade partner during Brown's second stint as the state's executive.

She'll also serve as co-chair of the Commission On The Future Of Mobility, formed in October by the think tank Securing America's Future Energy, which is aimed at shaping global policies around electric, autonomous and other new types of vehicles.

Nichols said she was excited by "the opportunity to think farther into the future and think bigger than we're usually able to do, even at an agency like CARB."

"I was anxious to find a way to kind of continue the work I've done at CARB, but without the responsibility of heading up a big agency or the constraints of the political environment when you're a member of an administration, which are always there," she said of the transportation commission, which also includes executives from Ford, Hyundai, FedEx and Qualcomm as members.

Nichols will serve as vice chair of the Berkeley institute, which organizes joint U.S.-China policy trainings, research and talks and is affiliated with Beijing's Tsinghua University and Xie Zhenhua, China's special representative for climate change affairs.

Brown, who focused heavily on international climate diplomacy as governor, said he still sees a role for California to advance climate policies with China even though Biden is making climate change a priority where former President Donald Trump didn't. Special Presidential Climate Envoy John Kerry said last week that he wouldn't compromise on other international flashpoints like intellectual property or territorial disputes in order to reach agreement on climate issues with China.

"We're keeping the door open with the Chinese," Brown said in an interview. "We're perhaps a bit more agile; we don't have the same constraints as the national government might face, so we can push on the envelope more aggressively and, I hope, more imaginatively."

Nichols agreed.

"I'm hoping the institute will continue to be a place where serious conversations can take place in an environment that's not as formal or as risky in some ways," she said. "It's not an official negotiating venue, but it is a place where interested people can come together and work on these challenges."

To view online:
https://subscriber.politicopro.com/energy/whiteboard/2021/02/nichols-joins-think-tanks-devoted-to-transportation-china-climate-policy-3986711

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Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 1/26/2021 4:52:42 PM
To: Campbell, Ann [Campbell.Ann@epa.gov]; Kabanda, Thierry [Kabanda.Thierry@epa.gov]; Rakosnik, Delaney [rakosnik.delaney@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: Availability to talk re regional haze?

See meeting request below from NPCA on Regional Haze – thanks!

From: Stephanie Kodish <skodish@npca.org>
Sent: Tuesday, January 26, 2021 10:41 AM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: Availability to talk re regional haze?

Hi Tomas, hope you are doing well and easily acclimating to your new role (congratulations!). Could we find a time to talk in the next 1-2 weeks about regional haze? I'm sure you are wildly busy so glad to accommodate your schedule if you might suggest some times. Thanks, Stephanie

Stephanie Kodish
Pronouns: she/her/hers
Senior Director & Counsel, Clean Air and Climate Programs | National Parks Conservation Association
P: 865.964.1774 | skodish@npca.org | **npca.org**
Your parks. Your turn.

Message

From: Campbell, Ann [Campbell.Ann@epa.gov]
Sent: 1/21/2021 9:25:47 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
CC: Shaw, Betsy [Shaw.Betsy@epa.gov]
Subject: FOR YOUR REVIEW: OAR EO Response Template
Attachments: OAR Response to EO Action Review.xlsx

Good afternoon, per our discussion this morning, please find attached for your consideration a straw template to gather

Ex. 5 Deliberative Process (DP)

Please let me know if you have any questions.

Thank you,

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

Message

From: Joseph Goffman [joegoffman@ Ex. 6 Personal Privacy (PP)
Sent: 1/20/2021 4:42:18 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Fwd: Legal Planet: Posts from 01/20/2021

---------- Forwarded message ---------
From: **Legal Planet** <noreply@legal-planet.org>
Date: Wed, Jan 20, 2021 at 8:05 AM
Subject: Legal Planet: Posts from 01/20/2021
To: <joegoffman@gmail.com>

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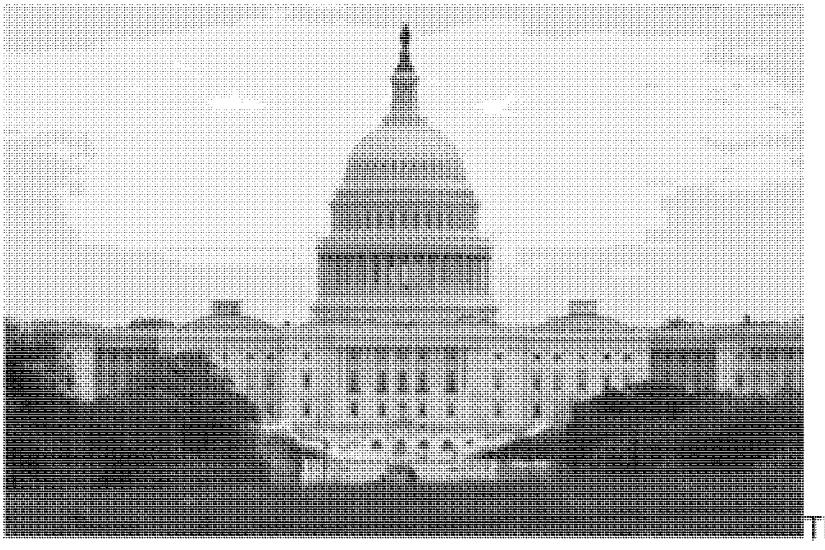
Environmental Law & Policy Insights from Berkeley Law and UCLA Law Faculty

LegalPlanet

The CRA is Back in Play

By Cara Horowitz



This post is co-authored by Beth Kent and Cara Horowitz Last week's Georgia Senate victories have given Democrats (bare) control of the Senate—and, with it, the potential to use the Congressional Review Act (CRA)

to erase some of the Trump Administration's regulatory rollbacks. Here are four key things to know about this unique legislative oversight …

Continue reading "The CRA is Back in Play"

The post The CRA is Back in Play appeared first on Legal Planet.

DC Circuit Gets Help from Grid Experts in Vacating ACE Power Plant Rule

By Cara Horowitz

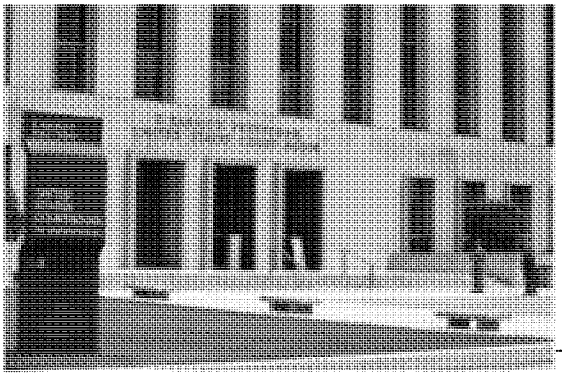
I've seen lots of good analysis already (including this post from Dan) of the DC Circuit's decision today to invalidate the Trump Administration's ACE Rule, which governs climate emissions from coal-fired power plants and does essentially nothing to reduce those emissions. It turns out that doing essentially nothing is not enough. There's a lot to …

Continue reading "DC Circuit Gets Help from Grid Experts in Vacating ACE Power Plant Rule"

The post DC Circuit Gets Help from Grid Experts in Vacating ACE Power Plant Rule appeared first on Legal Planet.

A Big Win for Climate Regulation

By Dan Farber



The D.C. Circuit issued an opinion today knocking out Trump's Affordable Clean Energy rule. The Trump rule was a rollback of Obama's keystone climate initiative, the Clean Power Plan. The majority opinion plus dissent take up 185 pages, and I won't try to describe it all here. Briefly, here's what the appeals court ruled and …

Continue reading "A Big Win for Climate Regulation"

The post A Big Win for Climate Regulation appeared first on Legal Planet.

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From: POLITICO Pro [alert@email.politicopro.com]
Sent: 1/28/2021 6:33:56 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Capito blasts early Biden climate moves, but offers tech innovation as a middle ground

Capito blasts early Biden climate moves, but offers tech innovation as a middle ground

By Anthony Adragna

01/28/2021 01:32 PM EST

Sen. Shelley Moore Capito warned Thursday that President Joe Biden's early climate change executive orders may have "really alienated some of the key players in the conversation" but also signaled she wanted to work together on technological innovation to combat the problem.

"I want to be a part of the solution. I am not a climate denier," Capito (R-W.Va.), incoming ranking member of the Environment and Public Works Committee, said in floor remarks. "We know it's the right thing to do. The free market is already moving in that direction."

She added: "This country has risen to every single challenge that we have had — this climate challenge is no different. I understand the urgency. I understand the issue. But with our American ingenuity, we can find the solutions together. So let's make our future one that we build together."

Questions on decision-making: Capito vowed to question Biden's nominees that come before her committee for their confirmation hearings — such as Michael Regan, who's been tapped to lead the EPA, and Brenda Mallory, Biden's pick to lead the White House Council on Environmental Quality — and how the administration intends to structure decision-making. She expressed concern that White House advisers on climate change John Kerry and Gina McCarthy are not subject to Senate confirmation.

"Will this Cabinet actually wield any power, or will the decisions be made in the White House in an effort to avoid public and congressional scrutiny?" she asked. "I'll definitely be asking those questions in the upcoming hearing."

Regan is scheduled to have his confirmation hearing before EPW on Feb. 3.

Mix of the future: Capito noted private companies are slashing their emissions — "that's awesome," she observed — and that consumers are shifting to greener products as well, but said the shift to cleaner energies could not happen overnight.

"A national energy transition really needs time and the Biden administration needs to be very clear about what their timetables really are," the West Virginia Republican said. "Renewables can't power our country at 100 percent all the time right now — maybe in the future — but right now they can't and battery technology hasn't been able to fill that gap. But we can address climate change together through innovation and technology."

To view online:
https://subscriber.politicopro.com/tech/whiteboard/2021/01/capito-blasts-early-biden-climate-moves-but-offers-tech-innovation-as-a-middle-ground-3986672

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Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 1/27/2021 10:20:15 PM
To: Grundler, Christopher [grundler.christopher@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]; Harvey, Reid [Harvey.Reid@epa.gov]
Subject: RE: Your question about EJ Analysis and CSAPR

Thank you Chris and Reid – this is very helpful to see!

From: Grundler, Christopher <grundler.christopher@epa.gov>
Sent: Wednesday, January 27, 2021 5:02 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>
Subject: Your question about EJ Analysis and CSAPR

Hi Tomás:

Ex. 5 Deliberative Process (DP)

I hope this is helpful. Again, feel free to explore this question tomorrow at our meeting

Chris

Christopher Grundler, Director
Office of Atmospheric Programs
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Message

From: POLITICO Pro Energy [alert@email.politicopro.com]
Sent: 1/26/2021 4:41:21 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Appeals court says Dakota Access pipeline environmental review falls short

Appeals court says Dakota Access pipeline environmental review falls short

By Ben Lefebvre

01/26/2021 11:39 AM EST

A federal appeals court ruled on Tuesday that the Trump administration did not complete a key environmental review for the Dakota Access pipeline, which could open the door for the Biden administration to shut down the pipeline until a new review is completed.

Details: The ruling from the U.S. Court of Appeals for DC Circuit upheld a lower court decision that found the Army Corps of Engineers allowed an easement necessary for the construction of the 570,000 barrel-a-day pipeline connecting North Dakota oil fields to the Midwest without first conducting an environmental review as required by law. But while the lower court ordered pipeline operator Energy Transfer to shut off deliveries until a new review was completed, the appeals court said that decision would be left to the Corps.

"We agree with the district court that the Corps acted unlawfully, and we affirm the court's order vacating the easement while the Corps prepares an environmental impact statement," the appeals court judges said in their opinion.

The judges noted that the Corps' original study did not properly consider that the DAPL leak-detection system would not be tripped if just one percent of the oil it carried leaked from the pipeline, an amount that would still be enough to seriously pollute the region's water supply. It also faulted the Corps for relying on industry-wide incident data, not information tied specifically to Energy Transfer's other projects.

But the judges said it would be up to the Corps to determine whether the pipeline should be shut down and that "we would expect it to decide promptly."

"It may well be—though we have no occasion to consider the matter here—that the law or the Corps's regulations oblige the Corps to vindicate its property rights by requiring the pipeline to cease operation and that the Tribes or others could seek judicial relief under the [Administrative Procedure Act] should the Corps fail to do so," the judges said in their written opinion.

An Energy Transfer spokeswoman did not immediately reply to questions. Kelcy Warren, a Dallas billionaire and prominent Trump ally and Republican campaign donor, was until October chief executive of Energy Transfer. Warren currently remains executive chairman of the company and its top shareholder.

Context: Calls for the Biden administration to take action against DAPL have increased since the administration last week said it would revoke a critical permit for the equally contentious Keystone XL pipeline, sources at various environmental groups have said.

Native American Tribes that had been fighting the pipeline in court for years said they have been pressuring Biden and those around him for weeks to order the Corps to force DAPL to shut down until a new review is completed. The Standing Rock Sioux and other bands of the Sioux tribe argued that the Army Corps of

Engineers under the Trump government did not properly analyze how a potential oil spill from the pipeline would impact the water supply to their reservation.

Tribe leaders in a letter to Biden last week said they are "requesting quick, decisive action on the Dakota Access Pipeline (DAPL) within the first ten (10) days of your Administration" in the letter addressed to Biden directly. "We have spent the entirety of the Trump Administration using our scarce resources to fight the Corps, represented by the United States Department of Justice, over its decision at the behest of President Trump to move forward based on a wholly inadequate analysis of our rights and environmental concerns."

Biden could easily require the Corps to halt the pipeline while a new environmental review is conducted, said Jan Hasselman, an attorney for environmental group Earthjustice who is among the lawyers leading the case against Dakota Access.

"There is a chorus asking them to step in," Hasselman said. "The pipeline is operating illegally as of today. It's an enforcement issue. The new administration can change that with a stroke of the pen."

Tribes had been lobbying the Biden team to act on the DAPL even before inauguration and he signed an executive order canceling the permit for the Keystone XL project, said Joye Braun, a member of the Cheyenne River Sioux tribe.

"It's been part of the conversation in the lead up to the inauguration and after," Braun said. "We are doing push back on it."

The White House did not immediately reply to questions. Vice President Kamala Harris last year included her name in a letter from senators to the court requesting that the pipeline be shut down during the review.

What's Next: Biden is expected to sign executive orders this week meant to strengthen the government's relationship with Native American tribes and lay out policies to fight climate change.

Alex Guillen contributed to this report.

To view online:
https://subscriber.politicopro.com/energy/article/2021/01/appeals-court-says-dakota-access-pipeline-environmental-review-falls-short-2030474

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From: Grundler, Christopher [grundler.christopher@epa.gov]
Sent: 1/29/2021 6:46:10 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]
CC: Edwards, Jonathan [Edwards.Jonathan@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
Subject: BBB Fire Drill--Revised document attached.
Attachments: EPA BBB2_OAPv6.docx

Colleagues:
Attached is OAP submittal. We chose to provide edits to the Word Document that was previously circulated.

1. All OAP additions/edits are highlighted in yellow.
2. We did not update the totals at the start of each section, nor did we update the table at the end.

Ex. 5 Deliberative Process (DP)

Christopher Grundler, Director
Office of Atmospheric Programs
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Message

From: Campbell, Ann [Campbell.Ann@epa.gov]
Sent: 1/25/2021 7:28:31 PM
To: Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: List of Existing Briefing Papers
Attachments: OAR Litigation Deadlines_Jan to April 2021_TC copy.xlsx

Tomas, as requested, attached is a list of the OAR litigation deadlines pulled from OGC's materials. The copy I've attached here for you also removes any EDF related litigation. Joe received a separate copy with that information included.

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Monday, January 25, 2021 8:19 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: List of Existing Briefing Papers

Thanks so much. Also, thanks for raising the list of litigation deadlines – I think it would be helpful to see the deadlines for OAR when convenient. Best,

Tomás

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Monday, January 25, 2021 8:18 AM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: List of Existing Briefing Papers

Of course! Here you go.

Ann (Campbell) Ferrio
Chief of Staff
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Office: 202 566 1370

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Monday, January 25, 2021 8:16 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: List of Existing Briefing Papers

Thank you Ann! Can you please send me these as well: Ozone Transport, NAAQS Standard Setting, Ethylene Oxide, Stationary Sources Court Ordered Reviews, and PFAS research/regulation?

Hope you had a good weekend,

Tomás

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Monday, January 25, 2021 8:13 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: List of Existing Briefing Papers

Good morning. Here you go. I also have OGC's master list of litigation deadlines if either of you would like to see it. Haven't had a chance yet to break out the OAR specific deadlines but can endeavor to do that if it would be helpful.

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Monday, January 25, 2021 7:48 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: List of Existing Briefing Papers

Thanks, Ann. Please see highlights below.

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Friday, January 22, 2021 6:17 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: List of Existing Briefing Papers

Joe, as discussed, below is the list of briefing papers by program prepared for the first team (and potentially as prep for confirmation hearings). There are 20 in all. Happy to provide any individual paper or the collection.

OTAQ: Heavy Duty Trucking Sector, Aircraft Engine PM Standards, and RFS
OAPPS: Benefit Cost Rule, PFAS Research, and PFAS Regulation
ORIA: Indoor Air & COVID, Phosphogypsum, Radon, and Waste Isolation Pilot Program
OAQPS: NAAQS Implementation, NAAQS Standard Setting, Ethylene Oxide, and Stationary Sources Court Ordered Reviews
OAP: Global Methane Initiative, AIM Act, GHG Emissions, Global Change Research Program – National Climate Assessment, Kigali Amendments, and Ozone Transport

That's it for me! I think your calendar is set for Monday and we have a plan for the rest of the week. Thank you both for being so gracious in these initial days. Have a wonderful weekend.

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

Message

From: Goffman, Joseph [jgoffman@law.harvard.edu]
Sent: 1/20/2021 3:50:47 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: [EXT] Re: [ADMINLAW] [EXTERNAL] Re: [ADMINLAW] lots going on but

Joseph Goffman | Executive Director
Harvard Law School | Environmental and Energy Law Program
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202.746 4693 | jgoffman@law.harvard.edu
Twitter: **@JosephGoffman**

From: Sarnoff, Joshua [mailto:JSARNOFF@DEPAUL.EDU]
Sent: Wednesday, January 20, 2021 10:31 AM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: Re: [ADMINLAW] [EXT] Re: [ADMINLAW] [EXTERNAL] Re: [ADMINLAW] lots going on but

But if the statute clearly and unambiguously authorizes a "major question" regulation, will it then pass the post-Gundy-resurrected nondelegation doctrine? Or will that have to morph into a new constitutional restriction on legislative grants of regulatory power? Sadly reminiscent of Justice Marshall's Benzene dissent, and the need to win the legislative battles over and over again (and perhaps constitutional amendments).

Another example of sub-constitutionalizing constitutional questions, and not for the better as it hides the judicial activism inherent in the creation of the new interpretive default (particularly one imposed retroactively on Congresses that enacted relevant statues long before the new default was in place, although one could always say that they could have anticipated future judicial changes). From "conservative" judges.

Josh

From: Todd Aagaard <aagaard@LAW.VILLANOVA.EDU>
Reply-To: Todd Aagaard <aagaard@LAW.VILLANOVA.EDU>
Date: Wednesday, January 20, 2021 at 9:08 AM
To: "ADMINLAW@LISTSERV.LSU.EDU" <ADMINLAW@LISTSERV.LSU.EDU>
Subject: [EXT] Re: [ADMINLAW] [EXTERNAL] Re: [ADMINLAW] lots going on but

As to #2, Cass Sunstein has a recent paper making exactly that observation, fittingly entitled, There Are Two 'Major Question' Doctrines.

From: Owen, Dave <owendave@UCHASTINGS.EDU>
Sent: Tuesday, January 19, 2021 9:49 PM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: [EXTERNAL] Re: [ADMINLAW] lots going on but

A few thoughts in response to David Zaring's points/questions:

1. On reverse *Chevron*: this is one of those cases in which an agency says, "we cannot do X because the statute unambiguously forecloses us from doing so," and the court responds by saying, "you can do X (and we don't need to say whether you *have to* do X) because the statute does afford you that discretion."

2. Judge Walker's concurring and dissenting (mostly dissenting) opinion has a really striking treatment of major questions doctrine. It seems to me, and I wonder if others agree, that we now have two very different versions of major questions doctrine metastasizing through the courts. One version—the Justice-Roberts-*King-v-Burwell* version—requires de novo review when an ambiguous statute raises a major question but does not purport to place a pro-regulatory or anti-regulatory thumb on the scales. The other version—the Walker version—precludes major new regulatory efforts unless a statute clearly and unambiguously authorizes those efforts. There's nothing neutral about it.

   Though he relies heavily on major questions doctrine, Walker never once cites *King v. Burwell*. And if major questions doctrine works the way he says it does, that case clearly was wrongly decided. So he seems to be selecting a version of the doctrine at odds with key Supreme Court precedent.

3. The way Judge Walker decides the case presents a major question also is striking. To assess the costs of greenhouse gas regulation under section 111, he cites industry estimates, which are notoriously likely to be inflated (which he acknowledges but makes no adjustment for). Then, to assess the scale of benefits, he mostly discusses the total benefits of addressing climate change and then only briefly refers to estimated benefits for this particular rule. It's also somewhat odd how much emphasis he gives to the scale of a regulatory program's benefits. The implication is that an agency could invoke an ambiguous statute as authorization for a rule that doesn't really benefit anyone all that much, but that if a rule with the same costs provides huge social benefits, the agency could not lawfully adopt it. That's perverse, to say the least.

It's a dissent, of course. But if this is a preview of major questions doctrine in a conservative judiciary, we'll all have a lot to write about.

Dave

From: Zaring, David <zaring@WHARTON.UPENN.EDU>
Sent: Tuesday, January 19, 2021 9:09 AM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: [ADMINLAW] lots going on but

I was trying to make a little sense out of the DC Circuit decision tossing the Trump EPA's version of the Clean Power Plan. I don't do environmental law except when required to, and this decision – per curiam, 185 pages, a standalone table of contents, and an introduction that didn't explain what the basis of the decision was – makes me kind of glad about that.

https://www.cadc.uscourts.gov/internet/opinions.nsf/6356486C5963F49185258662005677F6/$file/19-1140-1880546.pdf

But I gave it a skim. It appears that the majority thought that EPA's conclusion that the Clean Air Act did not permit the agency to regulate in the way it did in the Clean Power Plan was inconsistent with the act. The CPP I think permitted an aggregation of responses – a state/utility could meet national standards not only by reducing emissions at heavy CO2 emitting plants, but also by establishing that it was shifting to lower CO2 emitting sources. The Trump revision was justified on the basis that the CAA only permits regulation of stationary sources (power plants), and not inferential regulation beyond the smokestack.

A couple of inexpert thoughts:

- The majority is kind of a reverse Chevron? The idea is that the statute permits a wider range of actions than EPA thinks, and EPA is wrong to interpret the statute so narrowly. But it cites Chevron once.
- Classic Trump admin move of replacing a rule not by doing more science or cost-benefit analysis (though they might have done more in the part I skimmed too quickly), but by arguing that it just legally didn't have the right to do the thing the Obama admin did, as William Buzbee has argued IIRC. This also happened with DACA.

- New judge Walker, in concurrence, says that both the Obama and Trump rules would require congressional legislation, they are just too multi-billions big – a full-throated endorsement of the major questions doctrine that will be worth keeping an eye on. He cites Chevron a ton, but probably because it's a precondition to a major questions carveout. And that in turn raised an interesting question regarding what happens if Chevron gets tossed by the Supreme Court in these kinds of cases. Then courts would review agency rules to see if they decided questions that are too important to be decided without Congressional authorization – and that would mean that we'd have an actual reinvigoration of the nondelelgation doctrine, on some other basis than intelligible principle. Remarkable! And I say this as someone sympathetic to major questions constraints (I just don't think, say, the IRS should be able to toggle on or off the capital gains tax/OCC should give Apple and Amazon bank charters by rule).

Anyway, happy to hear what I'm getting wrong, &c.

David

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Message

From: POLITICO Pro [alert@email.politicopro.com]
Sent: 2/1/2021 10:05:02 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: POLITICO Pro Q&A: House Appropriations Interior and Environment Chair Chellie Pingree

POLITICO Pro Q&A: House Appropriations Interior and Environment Chair Chellie Pingree

By Anthony Adragna

02/01/2021 05:01 AM EST

Rep. Chellie Pingree (D-Maine) will lead the powerful Appropriations subcommittee responsible for funding the EPA and Interior Department, and she's vowed to pursue rebuilding the two agencies that she fears lost large numbers of staff and functionality during the Trump administration.

Pingree, who first arrived in Congress in 2009, didn't support sending the Bureau of Land Management's headquarters to Colorado, but she said there are "always complications" in undoing such moves. She lamented that Republicans were "clinging to some ideological thoughts from yesterday" in reaction to President Joe Biden's early actions on climate change, and she said it was "critically important" to support communities dependent on fossil fuel jobs during a transition to a clean energy economy.

In an interview Thursday, Pingree hailed the selection of Rep. Deb Haaland (D-N.M.) to lead the Interior Department as crucial to dealing with the "morass of challenges" facing Native Americans, and she praised Michael Regan, Biden's pick to lead the EPA, as "extremely qualified."

This transcript has been edited for length and clarity.

What do you think your top priorities are going to be in this new role, and are you planning on running the committee any differently than your predecessor, Rep. Betty McCollum (D-Minn.)?

I don't think I'll run it much differently than my predecessor. It's a small subcommittee and it's generally very collegial, and I think she tried very hard to make sure she was covering issues that were important to all the members on both sides of the aisle. So, [I'm] anxious to get to know the issues that the members have and making sure we try to be supportive when we can.

I feel like it's a perfect moment in time because we have this new administration coming in with a clear focus on climate change and environmental issues. And we've just had four years of an administration that really disliked those issues and dismantled a lot of the capacity at places like the Department of the Interior or the EPA. There's a lot of rebuilding to do. We've lost a lot of staff positions, good staff, experienced people. Programs have been dismantled. There's the whole reorganization at the Department of Interior that's sort of broken.

When you refer to rebuilding some of these agencies, what does that look like in terms of practical steps?

I think a lot of it will come out in the administration's budget. I can't say that I know every detail of where the new secretary and the new EPA administrator will think we should focus our attention. But I do know from being on the committee that everything related to climate change and many good people who were working there left their positions, so I think there are probably a lot of staff vacancies. I think there are probably some

departments that aren't functioning right now and I'm really just looking forward to learning more and being supportive in putting that back together.

One of the more controversial Trump administration moves last year was sending the Bureau of Land Management out to Colorado. Do you have a position on whether or not it should come back to Washington?

Well, there are always complications when you make a big change like that but then undo it. But I was not supportive of the move and I felt that it was a way for the [Trump] administration to somewhat dismantle the BLM. So, I will be interested to see if the best decision is to keep it in D.C. I think partly because of the pandemic it hasn't really made the move in the way they anticipated it, so it's probably a little bit in limbo but I can't say I'm highly knowledgeable yet.

There's so much talk from President Biden and among Democrats broadly about this concept of a just transition. What do you think that looks like in practice and is there a role for appropriations in making that a reality?

That's critically important. A lot of the resistance to renewable energy in the past has been from communities who either were going to lose jobs or perceived that they would lose jobs, so I think that the administration's focus on this as a job creator and how to make sure that you don't sort of create jobs in one part of the country and then dismantle another part of the country [is right].

Some of that I think has changed, particularly in the last decade, where, for a lot of coal-focused areas, the industry itself has really been depleted because we're not making as much electricity with coal or using it as much. So, some of it's already happening and the more important thing is to figure out: how do we support the transition that's already happening there? I think that on some of the public lands issues around fossil fuel leasing oil and gas leasing, the administration was looking at how to keep some of the existing leases so that you didn't find states that were suddenly losing enormous amounts of revenue, but changing our work going forward how royalties are collected.

So I think that they're trying to take a very measured approach to a really critical problem that we can't drag our feet about anymore. And I think they've taken a very strong stand and I think we've needed that, because we've spent too many years just sort of debating, is climate change real, do we really need to do these things, instead of saying, what are the economic economic opportunities for our country in solar, wind, electric cars, things that we should have been manufacturing a long time ago?

What have you made of some of the reactions from Republicans to some of these executive orders and things like Paris and then the broader climate order? It seems like they're even well behind where much of corporate America is at this point.

Welcome to Congress. It's as if some of the same talking points are on the desk with certain Republicans and they have no idea that the auto industry, for instance, is already tooling up to make electric cars and we'd be crazy to miss that opportunity. Or that in many states there's more solar industry jobs than there are coal or fossil fuel jobs anymore, even if it's perceived that way. Or that Texas is producing wind power. They're going to need a crash course in what industry does and doesn't care about, instead of sort of clinging to some ideological thoughts from yesterday. And I would also say that on the part of the American public, climate change is real. We're very focused on the pandemic now because that is such an enormous crisis in our lives but the public has been very aware of this in the past and will continue to be and I think that they expect us to make some very reasonable steps to move forward.

I wanted to ask about your colleague, Rep. Deb Haaland? How do you think she's going to approach running the Interior Department and how well do you know her?

I know her personally because she's a colleague of mine and we happen to live in the same apartment building, so I've gotten to know her a little bit and just yesterday was our first conversation about the whole idea of the Department of Interior and what some of her thoughts are. And I plan to continue that. But, in many ways, I'm most excited — if she's able to be confirmed — that we would have the first Native American there because having seen — as a committee member and also coming from a state that has four federally recognized tribes — just how serious many of the issues are about meeting our treaty obligations, the challenges that Native Americans have faced already around health outcomes with them with a pandemic even more seriously, Indian education. It's a morass of challenges, and to have somebody there who really understands how to navigate these issues — and has firsthand experience — is important. I also know that she's extremely dedicated to climate change — both on the impact on tribal communities but also from a global perspective. So I think she's a wonderful choice, and I would be really excited to work with her if she makes it through the process, which I hope she will.

I guess the same question but with regards to Secretary-designee Regan for the EPA. Have you had a chance to connect with him at all and what do you make of him as the pick?

I haven't. I've only been reading and hearing about him and he just looks extremely qualified with a lot of experience on the ground. And I think that will just be helpful because [the Trump] administration was pretty much openly hostile toward the EPA, and I think you need somebody who really understands what is important to focus on there and how to budget for that, how to rebuild the staff. I think he will be great.

This is not directly appropriations related but I was curious if there's been any further discussions in the Democratic caucus about using the Congressional Review Act and if there are any particular Trump era regulations that might be targeted with that?

I guess what I would say is: There are some general conversations about the importance of having access to that as a tool. The number of regulations that people might want to attack — given what this administration has done for four years — is so enormous, I think that are just challenges just to kind of focus on where best to use it.

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Message

From: POLITICO Pro Energy [alert@email.politicopro.com]
Sent: 1/27/2021 10:17:39 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Democratic red flags waving around Biden's climate agenda

Democratic red flags waving around Biden's climate agenda

By Anthony Adragna

01/27/2021 05:16 PM EST

Four House Democrats are urging President Joe Biden to rescind an Interior Department order limiting the approvals of new oil and gas drilling permits for federal land and water to high-level staff, suggesting Republicans may not be the only obstacles to Biden's sweeping climate change agenda.

Texas Democratic Reps. Vicente Gonzalez, Henry Cuellar, Lizzie Fletcher and Marc Veasey urged Biden in a letter to "reject policies that would ban responsible oil and gas leasing on federal lands and federal waters" on the same day he unveiled a sweeping climate change vision that paused all new drilling leases on public lands.

"A federal ban for any period of time will certainly imperil hundreds of thousands of jobs, entire communities, and billions of dollars in royalty revenues to the Federal Treasury and eliminate funding for important conservation programs such as the Land and Water Conservation Fund," the Democrats wrote, noting they were pleased by Biden's move to rejoin the Paris climate agreement on day one.

Manchin's watching: Sen. Joe Manchin (D-W.Va.), chair of the Energy and Natural Resources Committee, released a statement late Wednesday saying he spoke with White House officials on Tuesday about the executive orders and again urged innovation in energy technologies rather than eliminating certain fuel types.

"It is prudent to evaluate if taxpayers are receiving a fair return for the use of their resources," Manchin said, noting 53 percent of onshore acres leased and 77 percent of offshore acres leased are inactive. "This executive order will not impact energy activity like drilling or permitting on existing leases."

He also stressed he would hold the administration's feet to the fire to reinvest in communities that have seen lost jobs amid the transition to cleaner energy sources.

"I intend to hold the Administration to this while ensuring that the burden of any acceleration in already changing markets due to these actions is not unduly placed on these communities that powered our nation to greatness," Manchin said. "I stand ready to work with this Administration to ensure West Virginia communities see these much needed investments."

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Message

From: Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]
Sent: 1/26/2021 4:36:23 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: Message from Joe Goffman, Acting Assistant Administrator for OAR

Welcome Back Joe!

I look forward to working with you again. I'm still here overseeing OAR's Correspondence Unit. I will send you a separate email sometime today to see if you are okay with the standards closing paragraph OAR has used since you were last here and if you are okay with your signature block.

Sabrina

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Tuesday, January 26, 2021 10:35 AM
To: OAR-WIDE-EVERYONE <OARWIDEEVERYONE@epa.gov>
Subject: Message from Joe Goffman, Acting Assistant Administrator for OAR

Dear OAR Colleagues –

No one will enjoy a greater honor or privilege than the honor and privilege I now enjoy of returning to your side as your colleague. As some of you may recall, from 2009-2017, I served as OAR's Associate Assistant Administrator for Climate and Senior Counsel, which was the best experience of my career. Happy as I am to occupy a new role, now as OAR's Principal Deputy Assistant Administrator and current Acting Assistant Administrator, simply being back here with you all is what makes this return such a pleasure.

First, I would like to thank you all – and by "all" I mean every single person who works in OAR – for your service to the public and for your ongoing dedication and commitment to the mission of the Office of Air and Radiation and of the Environmental Protection Agency. No matter what your job here is, you have earned, and will continue to earn, the unending gratitude of our fellow Americans for the energy and care you devote to protecting the air we breathe, our health, and our quality of life. Of course, you are not here in quest of "thanks" and I'm pretty sure that when you look in the mirror you don't see a hero, but you're entitled both to the "thanks" and to seeing yourselves that way. You are certainly my heroes – every single one of you.

That's not an exaggeration. This has been a difficult year for our country and the world. Since March, the pandemic has brought hard times, fear, and illness to our communities, friends and families. Many of you may have been touched in some way by the hardships and tragedies this year has brought and we are here as colleagues to support you however we can; virtually everyone has had to cope with challenges none of us imagined having to face a year ago.

From everything I've seen and heard, OAR employees' resilience, ingenuity and perseverance has shone through, and that's a tremendous source of comfort. Maintaining your characteristic commitment to our mission with the utmost professionalism while adapting to these tough times should give us all confidence that we can face the challenges, and harvest the opportunities, 2021 puts in our path and continue to deliver for the American people. After all, the OAR culture I knew when I was here last doubtless will propel us forward again: bringing out the best in each other and understanding that there is no success outside the success we all create and share in together.

In his note to all of us last week, EPA Chief of Staff Dan Utech introduced himself and members of the new leadership team who have arrived so far. He also called our attention to some of President Biden's executive orders. One in

particular strikes to the core of our mission at OAR. The Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, says, "it is the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; ... and to prioritize ... environmental justice." It's as if President Biden were addressing EPA and OAR directly. Clearly, this is an amazing moment for us at OAR when our work will be even more vital and more highly valued in the coming months and years.

It is also my great pleasure to introduce Tomás Carbonell, who has joined the OAR leadership team as the Deputy Assistant Administrator for Stationary Sources. Tomás comes to EPA from the Environmental Defense Fund, where he was the Senior Counsel and Director of Regulatory Policy for that organization's clean air program. From 2008-2012, Tomás was an Associate at Van Ness Feldman, LLP, where he counseled diverse clients on federal legal and regulatory matters related to climate change, clean energy, and environmental and electricity regulation. He has a J.D. from Yale University, degrees in Environmental Change and Management and Development Economics from the University of Oxford, and bachelors' degrees in Chemical Engineering, Economics, and Multidisciplinary Studies from North Carolina State University. Please join me in welcoming Tomás, and please stay tuned for more introductions in the near future.

Very soon, via "Teams," we will have the chance to talk to and hear from each other directly as we get "all hands" meetings on the calendar with each of your offices. Please think about how you want to use that time to surface your concerns and share your suggestions for the best practices to continue or adopt in our work together going forward. A little later on we will also be engaging with the regions and states, the Office of General Counsel, the Office of Policy and other program offices as well as the public and our stakeholders.

Looking forward to connecting face-to-face

Thank you all very much for being here.

Stay safe and take care of yourselves and each other.

All best,
Joe

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

Message

From: Goffman, Joseph [jgoffman@law.harvard.edu]
Sent: 1/20/2021 3:50:19 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: [EXTERNAL] Re: [ADMINLAW] lots going on but

Joseph Goffman | Executive Director
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Twitter: **@JosephGoffman**

From: Jonathan Masur [mailto:jmasur@UCHICAGO.EDU]
Sent: Wednesday, January 20, 2021 10:32 AM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: Re: [ADMINLAW] [EXTERNAL] Re: [ADMINLAW] lots going on but

The approach in Walker's dissent was also advanced by then-Judge Kavanaugh when he sat on the DC Circuit. It would be interesting to try and count how many sitting Justices or members of the DC Circuit currently subscribe to this view. My best guess is that there are 2-4 on each court.

Alison Gocke also has a paper in progress on this subject. The paper isn't posted online yet, but she said that if you email her she'd be happy to send you a copy.

From: Todd Aagaard <aagaard@LAW.VILLANOVA.EDU>
Sent: Wednesday, January 20, 2021 7:14 AM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: Re: [ADMINLAW] [EXTERNAL] Re: [ADMINLAW] lots going on but

As to #2, Cass Sunstein has a recent paper making exactly that observation, fittingly entitled, There Are Two 'Major Question' Doctrines.

From: Owen, Dave <owendave@UCHASTINGS.EDU>
Sent: Tuesday, January 19, 2021 9:49 PM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: [EXTERNAL] Re: [ADMINLAW] lots going on but

A few thoughts in response to David Zaring's points/questions:

1. On reverse *Chevron*: this is one of those cases in which an agency says, "we cannot do X because the statute unambiguously forecloses us from doing so," and the court responds by saying, "you can do X (and we don't need to say whether you *have to* do X) because the statute does afford you that discretion."

2. Judge Walker's concurring and dissenting (mostly dissenting) opinion has a really striking treatment of major questions doctrine. It seems to me, and I wonder if others agree, that we now have two very different versions of major questions doctrine metastasizing through the courts. One version—the Justice-Roberts-*King-v-Burwell* version—requires de novo review when an ambiguous statute raises a major question but does not purport to place a pro-regulatory or anti-regulatory thumb on the scales. The other version—the Walker version—

precludes major new regulatory efforts unless a statute clearly and unambiguously authorizes those efforts. There's nothing neutral about it.

Though he relies heavily on major questions doctrine, Walker never once cites *King v. Burwell*. And if major questions doctrine works the way he says it does, that case clearly was wrongly decided. So he seems to be selecting a version of the doctrine at odds with key Supreme Court precedent.

3. The way Judge Walker decides the case presents a major question also is striking. To assess the costs of greenhouse gas regulation under section 111, he cites industry estimates, which are notoriously likely to be inflated (which he acknowledges but makes no adjustment for). Then, to assess the scale of benefits, he mostly discusses the total benefits of addressing climate change and then only briefly refers to estimated benefits for this particular rule. It's also somewhat odd how much emphasis he gives to the scale of a regulatory program's benefits. The implication is that an agency could invoke an ambiguous statute as authorization for a rule that doesn't really benefit anyone all that much, but that if a rule with the same costs provides huge social benefits, the agency could not lawfully adopt it. That's perverse, to say the least.

It's a dissent, of course. But if this is a preview of major questions doctrine in a conservative judiciary, we'll all have a lot to write about.

Dave

From: Zaring, David <zaring@WHARTON.UPENN.EDU>
Sent: Tuesday, January 19, 2021 9:09 AM
To: ADMINLAW@LISTSERV.LSU.EDU
Subject: [ADMINLAW] lots going on but

I was trying to make a little sense out of the DC Circuit decision tossing the Trump EPA's version of the Clean Power Plan. I don't do environmental law except when required to, and this decision – per curiam, 185 pages, a standalone table of contents, and an introduction that didn't explain what the basis of the decision was – makes me kind of glad about that.

https://www.cadc.uscourts.gov/internet/opinions.nsf/6356486C5963F49185258662005677F6/$file/19-1140-1880546.pdf

But I gave it a skim. It appears that the majority thought that EPA's conclusion that the Clean Air Act did not permit the agency to regulate in the way it did in the Clean Power Plan was inconsistent with the act. The CPP I think permitted an aggregation of responses – a state/utility could meet national standards not only by reducing emissions at heavy CO2 emitting plants, but also by establishing that it was shifting to lower CO2 emitting sources. The Trump revision was justified on the basis that the CAA only permits regulation of stationary sources (power plants), and not inferential regulation beyond the smokestack.

A couple of inexpert thoughts:

- The majority is kind of a reverse Chevron? The idea is that the statute permits a wider range of actions than EPA thinks, and EPA is wrong to interpret the statute so narrowly. But it cites Chevron once.
- Classic Trump admin move of replacing a rule not by doing more science or cost-benefit analysis (though they might have done more in the part I skimmed too quickly), but by arguing that it just legally didn't have the right to do the thing the Obama admin did, as William Buzbee has argued IIRC. This also happened with DACA.
- New judge Walker, in concurrence, says that both the Obama and Trump rules would require congressional legislation, they are just too multi-billions big – a full-throated endorsement of the major questions doctrine that will be worth keeping an eye on. He cites Chevron a ton, but probably because it's a precondition to a major questions carveout. And that in turn raised an interesting question regarding what happens if Chevron gets tossed by the Supreme Court in these kinds of cases. Then courts would review agency rules to see if they decided questions that are too important to be decided without Congressional authorization – and that would

mean that we'd have an actual reinvigoration of the nondelelgation doctrine, on some other basis than intelligible principle. Remarkable! And I say this as someone sympathetic to major questions constraints (I just don't think, say, the IRS should be able to toggle on or off the capital gains tax/OCC should give Apple and Amazon bank charters by rule).

Anyway, happy to hear what I'm getting wrong, &c.

David

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