



**WASHINGTON  
UPDATE**

**National Association of Clean Air Agencies  
N A C A A**

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***This Week in Review – July 10-14, 2017***

**(1) House Appropriations Subcommittee Votes to Maintain Level Funding in FY 2018 for State and Local Air Grants (July 12, 2017)** – The House Appropriations Subcommittee on Interior, Environment, and Related Agencies marked up and approved, by voice vote, a bill containing EPA’s funding for FY 2018. The bill provides level funding (compared to the FY 2017 enacted level) – \$228.2 million – for state and local air grants under Sections 103 and 105 of the Clean Air Act (the Administration requested \$159.5 million for FY 2018). In addition, the Subcommittee called for the retention of funding for fine particulate matter monitoring under Section 103 authority, rather than transitioning to Section 105 authority as EPA proposed. The bill also provides \$75 million for grants under the Diesel Emissions Reduction Act (DERA) program (the Administration requested \$10 million; the FY 2017 appropriation was \$60 million) and \$40 million for the Targeted Airshed Grant program (the Administration proposed eliminating this; the FY 2017 appropriation was \$30 million). For EPA’s budget, the bill calls for \$7.5 billion in FY 2018 (the Administration requested \$5.7 billion; the FY 2017 appropriation was \$8.1 billion). As part of the bill, the Subcommittee approved a legislative rider to postpone implementation of the 2015 ozone National Ambient Air Quality Standards (NAAQS) such that governors would submit their designations by October 26, 2024, EPA would promulgate final designations by October 26, 2025 and states would submit their State Implementation Plans under Section 110(a)(1) by October 26, 2026. Further, the rider would exempt permitted sources from the 2015 ozone NAAQS under certain circumstances, instead allowing them to comply with the previous, less stringent ozone standard. Additional legislative riders include ones to prohibit the use of any funds to 1) promulgate or implement any regulation requiring the issuance of Title V permits for emissions from biological processes associated with livestock production and 2) implement any provision in a rule if that provision requires mandatory reporting of greenhouse gas emissions from manure management systems. The bill will now go to the full House Appropriations Committee for mark-up and approval, tentatively scheduled for July 18, 2017. For further information: [http://www.4cleanair.org/sites/default/files/Documents/FY2018\\_Approps-EPA\\_Memo\\_on\\_House\\_Subcomm\\_Markup-071217.pdf](http://www.4cleanair.org/sites/default/files/Documents/FY2018_Approps-EPA_Memo_on_House_Subcomm_Markup-071217.pdf) and [http://www.4cleanair.org/sites/default/files/Documents/FY2018\\_Approps-Bill\\_Full\\_Comm\\_Print-071017.pdf](http://www.4cleanair.org/sites/default/files/Documents/FY2018_Approps-Bill_Full_Comm_Print-071017.pdf)

**(2) Public Health and Environmental Groups Ask D.C. Circuit to Vacate EPA's Ozone Designations Delay (July 12, 2017)** – Calling the delay “flagrantly illegal and arbitrary,” a dozen public health and environmental groups urged the U.S. Court of Appeals for the D.C. Circuit to summarily vacate EPA’s decision to extend, by one year, the deadline for promulgating initial area designations under the 2015 National Ambient Air Quality Standards (NAAQS) for ozone. The groups request in their motion that, in the alternative to summary vacatur, the court stay EPA’s decision pending resolution of their petition for judicial review. They also ask that the case be expedited “in light of the severe health threats at stake.” In the June 28 *Federal Register* notice announcing the delay, EPA relied on its authority under Clean Air Act Section 107(d)(1)(B)(i) to delay promulgation of initial area designations for one year “in the event the Administrator has insufficient information to promulgate the designations.” The groups argue that the factors cited in EPA’s decision are extraneous to this statutory criterion, focusing instead on EPA’s desire to reconsider the standards and to examine potential compliance issues. By failing to provide an explanation of what specific information it lacks to promulgate designations, EPA’s action was arbitrary and unlawful and should be vacated, the groups claim. They further argue that the designations delay would irreparably harm their members by prolonging their exposure to unhealthy ozone levels. The motion is accompanied by several hundred pages of exhibits, including numerous declarations attesting to the adverse health effects associated with ground-level ozone exposure. For further information: [http://www.4cleanair.org/sites/default/files/Documents/ALA\\_v\\_EPA-Motion\\_for\\_Vacatur\\_or\\_Stay\\_7-12-17.pdf](http://www.4cleanair.org/sites/default/files/Documents/ALA_v_EPA-Motion_for_Vacatur_or_Stay_7-12-17.pdf)

**(3) D.C. Circuit Delays Reinstatement of Methane Rule for 14 Days (July 13, 2017)** – The U.S. Court of Appeals for the D.C. Circuit granted EPA’s motion to delay the effectiveness of its July 3 decision to vacate the agency’s 90-day stay of the New Source Performance Standards for methane and volatile organic compound emissions from the oil and natural gas sector. In its July 7 motion, EPA asked the court to recall the mandate (the order directing the agency to lift the 90-day stay) and provide EPA and the respondent-intervenors relief from compliance for a reasonable period of time while they consider whether to seek relief from the court’s decision. In this case, the court issued the mandate on July 3, the same day that it issued its decision to vacate the 90-day stay – a departure from its usual practice of waiting until 7 days after the 45-day period for filing petitions for rehearing expires. Over the opposition of the environmental group petitioners and the petitioner-intervenors, the court agreed to recall the mandate for a limited period of 14 days to give EPA time to consider whether to petition for panel rehearing, rehearing *en banc*, or to pursue other relief. The court also signaled that it will not grant any further delays, writing: “To stay issuance of the mandate for longer would hand the agency, in all practical effect, the very delay in implementation this panel determined to be ‘arbitrary, capricious, [and] ... in excess of [EPA’s] statutory ... authority.” For further information: [http://www.4cleanair.org/sites/default/files/Documents/Clean\\_Air\\_Council\\_v\\_Pruitt-Order\\_Recalling\\_Mandate\\_7-13-17.pdf](http://www.4cleanair.org/sites/default/files/Documents/Clean_Air_Council_v_Pruitt-Order_Recalling_Mandate_7-13-17.pdf) (order recalling mandate) and

[http://www.4cleanair.org/sites/default/files/Documents/Clean\\_Air\\_Council\\_v\\_Pruitt-Motion\\_to\\_Recall\\_Mandate\\_7-7-17.pdf](http://www.4cleanair.org/sites/default/files/Documents/Clean_Air_Council_v_Pruitt-Motion_to_Recall_Mandate_7-7-17.pdf) (EPA's July 7 motion)

**(4) Senate EPW Committee Advances Nomination of OECA Head and Passes DERA Reauthorization Bill (July 12, 2017)**

– The Senate Environment and Public Works (EPW) Committee voted, 11 to 10, to advance the nomination of Susan Parker Bodine to be the Assistant Administrator of the EPA Office of Enforcement and Compliance Assurance (OECA). Bodine was nominated in May 2017 and testified at a nomination hearing before the Senate EPW Committee on June 13, 2017. The full Senate must now vote to confirm her appointment. Once that happens, she will be only the second official to be confirmed for an EPA post during this Administration. Bodine has served as the Chief Counsel for the Senate EPW Committee since January 2015. She previously served as Assistant Administrator of the EPA Office of Solid Waste and Emergency Response during the administration of George W. Bush, as Staff Director and Counsel for the House Transportation and Infrastructure Subcommittee on Water Resources and Environment and as an attorney in private practice. At the same business meeting, the EPW Committee voted to pass S. 1447, the Diesel Emissions Reduction Act (DERA) of 2017. The bi-partisan bill, introduced on June 27, 2017, would reauthorize the successful DERA program – first established in the Energy Policy Act of 2005 – for another five years, 2018 through 2022, with a recommended annual funding level of \$100 million. The sponsors have also proposed in the bill several changes to the DERA program including requiring the recognition of “differences in typical vehicle, engine, equipment, and fleet use throughout the United States.” For further information:

<https://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=BB9A4A97-1004-4DD8-B1F8-B8ACA7785086>,

<https://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=8146118B-1331-42F4-B776-31A4B41A1850>

and

<https://www.congress.gov/bill/115th-congress/senate-bill/1447?q=%7B%22search%22%3A%5B%22s+1447%22%5D%7D&r=1>

**(5) OMB Directs Federal Agencies to Develop Draft FY 2019 Budget Proposals (July 7, 2017)**

–The Office of Management and Budget (OMB) issued guidance to the heads of the federal departments and agencies (including EPA) on the development of proposed budgets for FY 2019. The guidance memorandum calls on agencies to “build on the ambitious plans laid out in the President’s first budget,” “present a comprehensive plan for reforming the Federal Government and reducing the Federal civilian workforce” and “reprioritize spending and redefine the proper role of the Federal government.” OMB expressed its intent to work with agencies to use the fiscal restraint needed to achieve economic growth of 3 percent over time. Federal agencies were directed to submit initial budget submissions by September 11, 2017 that continue the proposals included in the FY 2018 budget. However, they may propose additional investments including increases of no more than 5 percent if they reflect effective programs that support their mission and fill a clear federal role. Along with budget proposals, agencies must submit “Agency Report Plans” and long-term workforce plans consistent with

Executive Order 13781, “Comprehensive Plan for Reorganizing the Executive Branch” and the “Hiring Freeze” Presidential Memorandum (under OMB Memorandum M-17-22). These plans should include proposals in four categories: 1) eliminate activities, 2) restructure or merge, 3) improve organizational efficiency and effectiveness and 4) workforce management. Agencies are also required to submit draft Strategic Plans for FY 2018-2022. Finally, agencies must submit proposals to strengthen the use of data and evidence in decisionmaking. For further information: [http://www.4cleanair.org/sites/default/files/Documents/OMB\\_Memo\\_July\\_7\\_2017.pdf](http://www.4cleanair.org/sites/default/files/Documents/OMB_Memo_July_7_2017.pdf)

**(6) Environmental Groups and Tribes Challenge Bureau of Land Management Methane Rule Delay (July 10, 2017)** – A coalition of environmental and tribal groups led by the Sierra Club filed suit in the U.S. District Court for the Northern District of California to reinstate the Bureau of Land Management’s (BLM’s) Methane and Waste Prevention Rule for oil and gas well production activities on public lands. On June 15, Secretary of the Interior Ryan Zinke announced that BLM would indefinitely stay portions of the rule pending the resolution of legal challenges filed in the U.S. District Court for the District of Wyoming. Shortly thereafter, BLM successfully petitioned the Wyoming District Court to delay the court proceedings for 90 days while the agency considers administrative options to revise or rescind the rule. The environmental and tribal petitioners assert that BLM cannot stay the Methane and Waste Prevention Rule because 1) portions of the rule were already in effect; 2) BLM is misusing the stay to facilitate an administrative rewrite of the rule rather than, as the agency has claimed, to await the conclusion of judicial review in the Wyoming District Court; 3) BLM failed to offer adequate grounds for the stay; and 5) the decision to stay the rule did not have a reasoned basis. The petitioners further argue that that the stay substantively amended the Methane and Waste Prevention Rule and should have provided an opportunity for public comment. The complaint asks the court to vacate the stay and reinstate the rule’s compliance deadlines. For further information: [http://www.4cleanair.org/sites/default/files/Documents/Sierra\\_Club\\_v\\_Zinke\\_Complaint\\_10\\_July\\_2017.pdf](http://www.4cleanair.org/sites/default/files/Documents/Sierra_Club_v_Zinke_Complaint_10_July_2017.pdf)

**(7) 27 Senate Democrats Ask Administration to Implement Obama Methane Rules (July 10, 2017)** – A letter from 27 Senate Democrats urges President Trump to fully implement two methane rules finalized by the Obama Administration EPA and Bureau of Land Management (BLM) in 2016. The EPA rule limits methane emissions from new, modified and reconstructed sources in the oil and natural gas sector while the BLM rule limits methane emissions from oil and natural gas extraction activities on public lands. According to the group, the Trump Administration’s efforts to suspend both rules “are unwarranted and will harm public health, taxpayers, and our energy security.” The letter argues that suspending the rules will expose communities to dangerous air pollution and that past experience demonstrates that companies can cost-effectively comply with both regulations. Senators Tom Udall (D-NM), Sheldon Whitehouse (D-RI), Brian

Schatz (D-HI), Ed Markey (D-MA), Maria Cantwell (D-WA) and Michael Bennet (D-CO) led the letter writing effort. For further information: <https://www.tomudall.senate.gov/news/press-releases/udall-senate-democrats-urge-president-trump-to-implement-rules-that-limit-natural-gas-waste-and-safeguard-public-health>

**(8) G20 Statement on Climate Isolates U.S. Among Leading World Economies (July 8, 2017)** – The Group of 20 (G20) summit in Hamburg, Germany concluded with the release of a joint declaration document which singled out the U.S. for withdrawing from the Paris Agreement. In a section describing shared energy and climate priorities among the group, the 15-page document notes the U.S. decision to withdraw from the Paris Agreement and to halt efforts to achieve its pledged greenhouse gas emission reductions. The remaining 19-country block instead describes the Paris Agreement as “irreversible” and reaffirms the remaining countries’ commitment to achieving the agreement’s goals, including providing funds for mitigation and adaptation activities in developing countries. For further information: <http://www.4cleanair.org/sites/default/files/Documents/2017-G20-leaders-declaration.pdf>

**(9) Colorado Sets State Climate Goals and Joins U.S. Climate Alliance (July 11, 2017)** – Colorado Governor John Hickenlooper signed an executive order committing Colorado to reducing its greenhouse gas emissions and announcing that the state would join the U.S. Climate Alliance. Colorado is the thirteenth state to join the Alliance, which was formed in response to President Trump’s decision to withdraw the U.S. from the Paris Agreement. The group’s members have pledged to take action to help reduce U.S. greenhouse gas (GHG) emissions to 26 to 28 percent below 2005 levels by 2025. With the addition of Colorado, the group accounts for nearly 20 percent of total U.S. GHG emissions. The executive order mirrors that ambition with a state goal to reduce GHG emissions to at least 26 percent below 2005 levels by 2025. In addition, the order calls for power sector CO<sub>2</sub> emission cuts of 25 percent from 2005 levels by 2025, power sector CO<sub>2</sub> emission cuts of 35 percent by 2030 and annual electricity savings of 2 percent per year by 2020. For further information: [https://www.colorado.gov/governor/sites/default/files/executive\\_orders/climate\\_eo.pdf](https://www.colorado.gov/governor/sites/default/files/executive_orders/climate_eo.pdf)

**(10) California Releases Legislative Proposals to Extend Carbon Cap-and-Trade Program and Tackle Neighborhood-Level Air Pollution (July 10, 2017)** – California Governor Jerry Brown joined the state’s Senate and Assembly leaders to release a two-bill legislative package to extend the state’s carbon cap-and-trade program through 2030 and launch a program to measure and mitigate air pollution at the neighborhood level. Without reauthorization, California’s cap-and-trade program is due to expire in 2020. Assembly Bill (AB) 398, among other things, would impose a declining carbon emissions cap on the state between 2020 and 2030, eliminate the use of carbon offsets from outside of California for program compliance and decrease the amount of free carbon allowances distributed to

affected sources. AB 617 seeks to improve air quality in the most impacted communities and neighborhoods by establishing a program that would require increased monitoring as well as targeted mitigation actions. When the bills were introduced, Assembly Speaker Anthony Rendon said, "Once again, we are showing that in California, protecting the environment and improving public health are inextricably linked. With its strong air quality provisions, this agreement ensures that Californians in underserved communities – and communities most impacted by air pollution – will receive the greatest benefit. All communities deserve clean air, benefits from strong climate actions, and a strong green economy. This package does that." While strongly supporting the goals of reducing greenhouse gases, criteria pollutants and toxic air contaminants and improving air quality in disadvantaged communities throughout the state, the California Air Pollution Control Officers Association (CAPCOA) expressed concern in July 12, 2017 letter to Governor Brown that "it will be impossible to comply with the far-reaching new mandates without significant and sustained funding for monitoring networks, emissions reduction planning and reporting, regulatory and enforcement efforts, and incentive programs. In addition, new requirements for best available retrofit control technology may not be feasible given the aggressive timeline for implementation." Governor Brown has signaled that he would like the legislature to move quickly to vote on both measures. For further information: <https://www.gov.ca.gov/news.php?id=19870> and [http://www.4cleanair.org/sites/default/files/Documents/CAPCOA\\_Letter-Cap\\_and\\_Trade-OpnoseUnlessAmendedLetter-7.12.2017.pdf](http://www.4cleanair.org/sites/default/files/Documents/CAPCOA_Letter-Cap_and_Trade-OpnoseUnlessAmendedLetter-7.12.2017.pdf)

## ***The Week Ahead***

- Environmental Council of the States State Environmental Protection (STEP) Meeting, Reframing our Environmental Future, in Washington, DC – July 17, 2017
- House Committee on Appropriations Markup of FY 2018 Interior, Environment, and Related Agencies Appropriations Bill, in Washington, DC – July 18, 2017
- House Energy and Commerce Subcommittee on Energy Hearing on "Powering America: Examining the State of the Electric Industry through Market Participant Perspectives," in Washington, DC – July 18, 2017
- House Committee on Natural Resources Oversight and Investigations Subcommittee Hearing on Examining Impacts of Federal Natural Resources Laws Gone Astray, Part II," in Washington, DC – July 18, 2017
- House Committee on Natural Resources Energy and Mineral Resources Subcommittee Hearing on "Promoting Onshore Oil and Gas Development in Alaska," in Washington, DC – July 18, 2017
- House Transportation and Infrastructure Subcommittee on Highways and Transit Hearing on "Fixing America's Surface Transportation (FAST) Act Implementation: Improving the Safety of the Nation's Roads," in Washington, DC – July 18, 2017

- Senate Committee on Energy and Natural Resources Hearing to Examine the Status and Outlook for U.S. and North American Energy and Resource Security, in Washington, DC – July 18, 2017
- EPA Children’s Health Protection Advisory Committee (CHPAC) Meeting in Washington, DC – July 18-19, 2017
- House Committee on Science, Space and Technology Hearing on Energy Innovation: Letting Technology Lead, in Washington, DC – July 19, 2017

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