

## **In In this week's Washington Update:**

1. Biden Administration Issues Sweeping Executive Orders On "Climate Day"
2. GM Announces Plans to Become Carbon Neutral by 2040
3. D.C. Circuit Issues Opinion in Case Challenging 2015 and 2018 Ozone NAAQS Implementation Rules
4. U.S. District Court Delays Effective Date of EPA's "Science Transparency" Rule; Expresses "Significant Doubt" About Rule's Legality
5. More Legal Challenges Filed Against CAA Rules Issued in Final Weeks of Trump Administration
6. NRDC, Sierra Club Challenge NHTSA Interim Final Rule Delaying Increases in Civil Penalties for Automakers that Fail to Comply with Fuel Economy Standards
7. In Court Actions, VW Challenges State & Local Pollution Regulatory Authority
8. Energy Nominee Granholm Faces Senate Confirmation Hearing
9. EPA Reaches Settlement Agreement with Dow Chemical and Subsidiaries to Reduce Emissions from Flaring at Louisiana and Texas Chemical Plants
10. Researchers Conclude Corn Ethanol Emits 46 Percent Less GHGs than Gasoline
11. Corporate Clean Energy Purchases Reached New Peak in 2020

## ***This Week in Review***

### **(1) Biden Administration Issues Sweeping Executive Orders On "Climate Day"**

**(January 27, 2021)** – President Joseph R. Biden Jr. announced three sweeping executive actions including two Executive Orders (EO) that are aimed at focusing federal activity to address climate change, improve environmental justice, and advance clean air. The first, "Tackling the Climate Crisis At Home And Abroad", articulates a number of major initiatives to be undertaken by the administration. The EO lays out a series of efforts to work internationally by announcing a "Climate Leaders Summit" of world leaders to be held on April 22, 2021; by starting the process to develop the U.S. "nationally determined contribution" target for compliance with the Paris Agreement on Climate Change; by directing the development of a National Intelligence Estimate on the security implications of climate change; and by taking steps toward ratification of the Kigali Amendment to the Montreal Protocol addressing hydrofluorocarbon emissions, which are a potent greenhouse gas (GHG). The EO further orders the development of a "whole of government" approach to climate change, creating a National Climate Task Force assembling 21 federal agencies led by the National Climate Advisor. The EO directs all federal agencies to use procurement to emphasize and deliver GHG emission reductions, which could affect as many as 674,000 federally owned vehicles. The EO calls for every federal agency to develop a climate resilience plan for their facilities and operations; for the Secretary of the Interior to "pause on entering into new oil and gas leases on public lands or offshore waters"; and for all federal agencies to eliminate fossil fuel subsidies consistent with applicable law. The EO directs agencies "to ensure that Federal infrastructure investment reduces climate pollution, and to require that Federal permitting decisions consider the effects of greenhouse gas emissions and climate change", and "Agency heads conducting infrastructure reviews shall, as

appropriate, consult from an early stage with State, local, and Tribal officials”. The EO calls for the establishment of a “Civilian Conservation Corps” that is aimed at creating jobs in conservation and carbon sequestration, and engages the Secretary of Agriculture to encourage “adoption of climate-smart agricultural practices”. It establishes an Interagency Working group on Coal and Power Plant Communities and Economic Revitalization to coordinate investments in economic and energy transitions in communities whose economies depend on fossil fuel production and use. The order directs the Department of Justice to institutionally prioritize environmental justice – potentially renaming its Environment and Natural Resources Division as the “Environmental Justice and Natural Resources Division” - and establishes a pair of Environmental Justice Councils at the White House. It calls for an initiative to deliver “40 percent of the overall benefits of relevant federal investments to disadvantaged communities”, with a new screening tool building off of EPA’s EJSCREEN system within six months of the order. In a second concurrent action, the Biden Administration released a “Presidential Memorandum on Scientific Integrity and Evidence-Based Policymaking”. The memorandum directs the White House office of Science and Technology Policy to ensure scientific integrity across federal agencies and calls for agencies that engage in research to designate a Chief Science Officer and a career employee as Scientific Integrity Official. In a third action, the President issued an Executive Order re-establishing the President’s Council of Advisors on Science and Technology (PCAST). This Council will be made up of both Federal agency officials and non-federal experts with “diverse perspectives and expertise in science, technology, and innovation” and will advise the president on technical information relating to the environment, energy, racial equity, security, and other topics. For further information:

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/> and <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/> and <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-presidents-council-of-advisors-on-science-and-technology/>.

**(2) GM Announces Plans to Become Carbon Neutral by 2040 (January 28, 2021) –**

General Motors (GM) CEO Mary Barra announced the company’s plans to become carbon neutral by 2040, “which means removing emissions from all our products, including every vehicle we produce, and all of our global operations in the next twenty years. Where removing emissions is not possible – for example if the technology does not yet exist in those timeframes – we will compensate for those emissions through carbon credits or carbon capture. Our preference will always be for removal of emissions. This is a critical step on the path to a net-zero-carbon future.” Among the plans Barra outlined for meeting this target is “an aspiration to eliminate tailpipe emissions from new light-duty vehicles by 2035.” Barra also noted that the company is working with the Environmental Defense Fund and governments, partners and suppliers “to build out the necessary charging infrastructure and to encourage the use of renewable energy in electric vehicle charging, to make it easier for every electric vehicle driver to play their part in the battle against climate change.” She also committed to using 100 renewable energy to power GM’s U.S. facilities by 2030 and its global facilities by 2035, “five years ahead of our previous goal.” For further information:

<https://www.linkedin.com/pulse/general-motors-intends-lead-auto-industry-world-future-mary-barra>

**(3) D.C. Circuit Issues Opinion in Case Challenging 2015 and 2018 Ozone NAAQS Implementation Rules (January 29, 2021)** – The U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in *Sierra Club v. EPA* (Case No. 15-1465), granting in part and denying in part petitions for review of four provisions of the 2015 and 2018 ozone NAAQS implementation rules. The court vacated two provisions – the inter-precursor trading program and EPA’s interpretation of the contingency measure requirements of the Clean Air Act to allow the use of already-implemented measures – “because they contravene the statute’s unambiguous language.” The court also vacated a provision allowing use of the implementation-based option for compliance demonstrations “because it rests on an unreasonable interpretation of the statute.” With respect to the petitioners’ challenge of the provision allowing states to choose between two alternative baseline years, the court denied the petition for review. For further information: [http://www.4cleanair.org/sites/default/files/Documents/Sierra\\_Club\\_v\\_EPA-Opinion\\_1-29-21.pdf](http://www.4cleanair.org/sites/default/files/Documents/Sierra_Club_v_EPA-Opinion_1-29-21.pdf)

**(4) U.S. District Court Delays Effective Date of EPA’s “Science Transparency” Rule; Expresses “Significant Doubt” About Rule’s Legality (January 27, 2021)** – In an order granting a motion for partial summary judgment filed by a coalition of environmental groups (see related article in the January 9-15, 2021 Washington Update), the U.S. District Court for the District of Montana declared that EPA acted unlawfully when it made its “Science Transparency” rule effective immediately upon publication in the *Federal Register* and ordered that the rule’s effective date be delayed to February 5, 2021 – 30 days after it was published. The order clears the way for opponents of the rule to file petitions for administrative reconsideration with EPA, or for the Biden Administration to withdraw the rule. The rule, “Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information,” limits EPA’s discretion to consider, in its regulatory decision-making, scientific research for which underlying data are not publicly available. EPA made the final rule effective immediately upon publication in the *Federal Register* on January 6, 2021, citing two justifications as to why this did not violate the Administrative Procedure Act’s (APA’s) general requirement that a new regulation be published “not less than 30 days before its effective date.” First, the agency asserted that the regulation is a “procedural rule,” and therefore exempt from the APA’s delayed-effective date requirement. In the alternative, it argued that the rule satisfied the “good cause” exception to the APA’s delayed-effective-date requirement because “immediate implementation of the rule ... is crucial for ensuring confidence in EPA decision-making.” The court rejected both arguments. First, it held that the rule is substantive, not procedural, because it “fails to provide the agency with procedural direction” and imposes substantive limitations to the agency’s discretion. “EPA conclusively determined how it will weigh certain scientific studies based on the availability of underlying clinical data,” Chief District Judge Brian Morris wrote. “EPA’s determination provides no room for discretion, and it is a critical factor in an otherwise inflexible statutory formula for setting health-based pollutant standards in statutes like the CAA. .... Before the rule, EPA possessed discretion to give equal – or unequal – weight to scientific research in developing new regulations, regardless of whether a study’s underlying clinical data was available. EPA now lacks that discretion.” The court further held that the rule does not meet the APA’s “good cause” exception to the delayed-effective-date requirement, citing legal precedent establishing that the exception is “narrowly

construed and only reluctantly countenanced.” EPA’s justification “falls short,” the court found. “EPA failed to demonstrate how delayed implementation would cause real harm to life, property, or public safety. EPA failed to describe the crisis of ‘confidence’ it sought to address. EPA failed to show a need for urgent implementation when it took more than two-and-one-half years to finalize this regulation.” In addition to rejecting EPA’s justifications for making the rule immediately effective, the court noted that its determination that the rule is substantive rather than procedural “casts into significant doubt whether EPA retains any legal basis to promulgate the Final Rule.” That is because EPA promulgated the rule based solely on its housekeeping authority, but this authority only permits the promulgation of procedural rules. For further information:

[http://www.4cleanair.org/sites/default/files/Documents/EDF\\_v\\_EPA-D\\_Mt\\_Order\\_1-27-21.pdf](http://www.4cleanair.org/sites/default/files/Documents/EDF_v_EPA-D_Mt_Order_1-27-21.pdf)

**(5) More Legal Challenges Filed Against CAA Rules Issued in Final Weeks of Trump Administration (January 19 and 25, 2021)** – Environmental groups, states and cities have filed petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit challenging EPA rules promulgated under the Clean Air Act in November and December, 2020. These lawsuits are in addition to cases filed last by coalitions of states and cities against other rules finalized in the last weeks of the Trump Administration, including EPA’s 1) “Science Transparency” rule, 2) decision to retaining the existing Ozone National Ambient Air Quality Standards, 3) GHG Significant Contribution Finding rule, and 4) Major MACT to Area rule (see related article in January 16-22 Washington Update). The new petitions for review challenge the following rules:

- **Project Emissions Accounting Rule:** Published on November 24, 2020, this rule revises the New Source Review (NSR) permitting program’s applicability test for determining whether a proposed project at an existing stationary source is a “major modification” subject to NSR permitting requirements. The rule, which essentially codifies an interpretation announced by the agency in a March 2018 memorandum, applies to EPA and permitting authorities exercising delegated authority to issue NSR permits on EPA’s behalf. It provides that emission decreases are to be considered along with emission increases during “Step 1” of the two-step NSR applicability test. Petitions for review have been filed by a coalition of states led by New Jersey, and by environmental groups. The state petitioners are New Jersey, Maryland, Massachusetts, Minnesota, Oregon, Pennsylvania, Washington and the District of Columbia. The environmental petitioners are the Environmental Defense Fund, Environmental Integrity Project, Natural Resources Defense Council and Sierra Club. For further information:  
[http://www.4cleanair.org/sites/default/files/Documents/New\\_Jersey-v-EPA\\_21-1033\\_PFR.pdf](http://www.4cleanair.org/sites/default/files/Documents/New_Jersey-v-EPA_21-1033_PFR.pdf) and  
[http://www.4cleanair.org/sites/default/files/Documents/EDF\\_v\\_EPA\\_21-1039\\_PFR.pdf](http://www.4cleanair.org/sites/default/files/Documents/EDF_v_EPA_21-1039_PFR.pdf)
- **Clean Air Act Cost-Benefit Analysis Rule:** Published on December 23, 2020, this rule governs how EPA calculates costs and benefits for rules promulgated under the Clean Air Act. The rule, “Increasing Consistency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process,” requires the agency to prepare a benefit-cost analysis (BCA) document for all future Clean Air Act regulations with economic impacts over \$100 million or that disproportionately affect an industry, group, or area; or those that are novel or relevant for other policy reasons. To prevent co-mingling of “benefits” and “co-benefits” to

justify a regulation, the rule requires that BCAs, in addition to presenting a proposed rule's total costs and benefits, separately report the public health and welfare benefits attributable to the specific pollution-reduction or other objectives targeted by the CAA provisions under which the rule is promulgated. A petition for review was filed by California Communities Against Toxics, the Natural Resources Defense Council, and Sierra Club. For further information:

[http://www.4cleanair.org/sites/default/files/Documents/California\\_Communities\\_Against\\_To\\_xics\\_v\\_EPA\\_21-1041\\_PFR.pdf](http://www.4cleanair.org/sites/default/files/Documents/California_Communities_Against_To_xics_v_EPA_21-1041_PFR.pdf)

**(6) NRDC, Sierra Club Challenge NHTSA Interim Final Rule Delaying Increases in Civil Penalties for Automakers that Fail to Comply with Fuel Economy Standards (January 25, 2021)** – The Natural Resources Defense Council and Sierra Club filed a petition in the U.S. Court of Appeals for the Second Circuit challenging an interim final rule issued by the National Highway Traffic Safety Administration (NHTSA) delaying increased fines for noncompliance with fuel economy standards. The interim final rule in question, titled “Civil Penalties,” was published in the *Federal Register* on January 14, 2021 (86 Fed. Reg. 3016) and is NHTSA’s response to the Alliance of Automotive Innovation’s (AAI’s) October 2, 2020 petition for a delay in the start of higher penalties for automakers that fail to meet fuel economy requirements. In 2015, Congress called on federal agencies across the board to adjust civil penalties to account for inflation. NHTSA responded in 2016, against the protests of auto manufacturers, with a rule to increase fines for noncompliance with federal fuel economy standards from \$5.50 to \$14 for every 0.1 mile per gallon by which new cars and trucks exceed the standards. In 2019, the Trump Administration suspended the rulemaking but on August 31, 2020, the U.S. Court of Appeals for the Second Circuit overturned that action prompting AAI’s petition to NHTSA. Under the challenged January 14, 2021 interim final rule, which took effect immediately, the higher fines would apply in model year 2022 unless the Second Circuit’s decision is vacated. For further information:

<https://www.sierraclub.org/sites/www.sierraclub.org/files/press-room/2020.01.25%20Petition%20for%20Review.pdf> and

<https://www.govinfo.gov/content/pkg/FR-2021-01-14/pdf/2021-00278.pdf>

**(7) In Court Actions, VW Challenges State & Local Pollution Regulatory Authority (January 25, 2021)** - In two separate court actions, Volkswagen AG challenged the authority of states to take enforcement action over software updates it sent to vehicles it manufactured that enabled emissions cheating. In a Jan. 21 petition for review but the Supreme Court (Volkswagen Group of America, Inc., et al., Petitioners v. The Environmental Protection Commission of Hillsborough County, Florida, et al., Case No. 18-15937) asks the court to overturn a June 1, 2020 ruling by the U.S. Court of Appeals for the 9th Circuit that found that EPA does not have exclusive enforcement jurisdiction over post-sale fleetwide software updates affecting emissions from cars. The 9<sup>th</sup> Circuit decision allowed counties in Florida and Utah to pursue enforcement for VW’s use of emissions software that enabled vehicles to exceed allowable limits. In its review petition, VW argues that the 9th Circuit decision misconstrues the Clean Air Act limitation of EPA authority to “new” cars, arguing that post-sale software changes still fall under the agency’s authority. In oral arguments in a separate case before the Ohio Supreme Court on January 26 (State of Ohio v. Volkswagen Group, Ohio Supreme Court Case no. 2020-0092), the Attorney General of Ohio argued that Volkswagen updates to onboard electronic emissions monitoring to change emissions data

are akin to an act committed by a mechanic tampering with the vehicle and are thus jurisdictional to state enforcement, while Volkswagen's attorneys argued that states are pre-empted by the Clean Air Act from regulating computer updates by a manufacturer. The \$14 billion in settlements Volkswagen agreed to in 2008 with California and the EPA allow states to bring criminal and civil cases but courts in Alabama, Illinois, Missouri, Minnesota, and Tennessee have blocked these state efforts. Volkswagen potentially faces a \$350-million-a-day fine in Ohio for emissions control defeat efforts resulting from the software updates, as well as the potential for liability before other states. For further information: and <https://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2020/0092>

**(8) Energy Nominee Granholm Faces Senate Confirmation Hearing (January 27, 2021) -**

The U.S. Senate Committee on Energy and Natural Resources held a hearing with former Michigan Governor Jennifer Granholm as part of the confirmation process for her nomination to be the next Secretary of Energy for the Biden Administration. In her opening remarks, Granholm offered support for the domestic production and deployment of electric car batteries, wind energy, carbon capture technology and other zero emissions technology, with an emphasis on job creation. "The products that reduce carbon emissions are going to create a \$23 trillion global market by 2030. That is a massive opportunity," Granholm told the Senate Committee. The Department of Energy oversees research, development, and deployment of energy and electricity systems through its 17 national labs, but much of its \$35 billion annual budget is tasked with management of nuclear fuel and weapons cleanup, nonproliferation, and the cleanup of contaminated sites. During questioning, Granholm noted the opposition of the Biden Administration to long term spent nuclear fuel storage at Yucca Mountain in Nevada. Pressed by Republican senators on the role for oil, fossil gas, and coal in the nation's energy portfolio, Granholm offered that "I think it's important that as we develop fossil fuels, we also develop the technology to reduce greenhouse gas emissions." For further information: <https://www.energy.senate.gov/hearings/2021/1/hearing-to-consider-nomination-of-the-honorable>

**(9) EPA Reaches Settlement Agreement with Dow Chemical and Subsidiaries to Reduce Emissions from Flaring at Louisiana and Texas Chemical Plants (January 27, 2021) –** EPA, the Department of Justice and the Louisiana Department of Environmental Quality announced the finalization of a consent decree with Dow Chemical Company and its subsidiaries Performance Materials NA, Inc. and Union Carbide Corporation over alleged excess emissions resulting from petrochemical and chemical flares at four facilities located in Freeport, Texas, Hahnville, Louisiana, Orange, Texas and Plaquemine, Louisiana. The facilities are olefins plants and polymer plants. The complaint alleges that the facilities emitted volatile organic compounds (VOCs) and hazardous air pollutants (HAPs) including benzene in violation of Clean Air Act permits and regulations and Texas and Louisiana State Implementation Plan requirements. Under the settlement agreement, the facilities will install pollution controls estimated to reduce more than 5,600 tons per year of VOCs and nearly 500 tons per year of HAPs. Dow will also pay a \$3 million civil penalty. The proposed consent decree was lodged in the U.S. District Court for the Eastern District of Louisiana is subject to a 30-day public comment period and court approval. For further information: <https://www.epa.gov/enforcement/dow-chemical-company-performance-materials-na-inc-and-union-carbide-corporation-clean>

**(10) Researchers Conclude Corn Ethanol Emits 46 Percent Less GHGs than Gasoline (January 26, 2021)** – A team of researchers led by David MacIntosh, Chief Science Officer of Environmental Health & Engineering, Inc. (EH&E) and Adjunct Professor of Environmental Health at Harvard’s T.H. Chan School of Public Health, announced the acceptance of a manuscript by *Environmental Research Letters*, titled “Carbon intensity of corn ethanol in the United States: state of the science.” According to EH&E, a previous analysis conducted by EPA found the difference in greenhouse gas (GHG) emissions from ethanol versus gasoline to be 20 percent but the “topical review of the latest science shows that this renewable biofuel is less carbon intensive and more climate-favorable than previously thought.” MacIntosh said in a press release, “This research provides an up-to-date accounting of corn starch ethanol’s GHG profile in comparison to that of gasoline refined from crude oil. The results of this research are timely for the scientific, public health, legislative, and business communities seeking to establish a net zero carbon economy while addressing related technological, political and economic challenges.” For further information: <https://iopscience.iop.org/article/10.1088/1748-9326/abde08>

**(11) Corporate Clean Energy Purchases Reached New Peak in 2020 (January 25, 2021)** – Corporate procurements of clean energy increased 15% in 2020 over previous years, despite the economic devastation triggered by the COVID-19 pandemic. A study by Bloomberg New Energy Finance shows that large corporations procured 23.7 gigawatts of renewable energy globally, compared to the previous record of 20.1 gigawatts set in in 2019. More than 130 companies signed renewables contracts last year. Amazon.com Inc. was the largest individual green power purchaser, securing 5.1 gigawatts of renewable energy, according to the report. For further information: <https://about.bnef.com/blog/corporate-clean-energy-buying-grew-18-in-2020-despite-mountain-of-adversity/>

## ***The Week Ahead***

- [National Academies of Sciences, Engineering, and Medicine Webinar on "Accelerating Decarbonization of the United States Energy System: Public Briefing"](#) – February 2, 2021
- [Politico Webinar on "Communities in Transition: The Future of American Energy"](#) – February 2, 2021
- [American Bar Association Webinar on "When Race and Environment Collide: The Impact of Systemic Racism on Environmental Justice"](#) – February 3, 2021
- [American Council on Renewable Energy Webinar on "State of the Industry: Strengthening Global Competitiveness in a New Administration"](#) – February 3, 2021
- [Bipartisan Policy Center Webinar on "Energy Information Administration's Annual Energy Outlook Release"](#) – February 3, 2021

- [Senate Environment and Public Works Committee Hearing to Examine the Nomination of Michael Regan, to be the Administrator of EPA](#), in Washington, DC – February 3, 2021
- [Senate Committee on Energy and Natural Resources Hearing to Examine Global Climate Trends and Progress in addressing Climate Change](#), in Washington, DC – February 3, 2021
- [House Committee on Transportation and Infrastructure Hearing on “Protecting Transportation Workers and Passengers from COVID: Gaps in Safety, Lessons Learned, and Next Steps.”](#) in Washington, DC and Virtually – February 4, 2021

---

**NACAA**  
**1530 Wilson Blvd., Suite 320**  
**Arlington, VA 22209**  
**(571) 970-6678**  
**4cleanair@4cleanair.org**