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This Week in Review

(1) EPA Issues Final Revised CSAPR Update (March 15, 2021) – In response to a September 13, 2019 ruling by the U.S. Court of Appeals for the District of Columbia Circuit, EPA Administrator Michael Regan signed the Final Revised Cross-State Air Pollution Rule (CSAPR) Update. The D.C. Circuit remanded the 2016 Final CSAPR Update to EPA on the grounds that it was inconsistent with the Clean Air Act because upwind states' compliance dates did not align with downwind states' obligations under the Act. Based on new air quality modeling, the Final Revised CSAPR Update seeks to address fully the outstanding interstate transport obligations of 21 states relative to the 2008 National Ambient Air Quality Standard (NAAQS) for ozone. As in the proposed revised rule, EPA concludes in this final revised rule that for nine of the 21 states for which the CSAPR Update was previously deemed to be only a partial remedy – Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas and Wisconsin – nitrogen oxide (NO_x) emissions projected for the 2021 ozone season and thereafter do not significantly contribute to a continuing downwind nonattainment or maintenance problem and, therefore, the nine states' CSAPR Update Federal Implementation Plans (FIPs) (or the State Implementation Plans [SIPs] subsequently approved to replace certain states' CSAPR Update FIPs) fully address their interstate ozone transport obligations with respect to the 2008 ozone NAAQS. For the remaining 12 states – Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia – EPA concludes that NO_x emissions projected for the 2021 ozone season will contribute to downwind states' nonattainment and/or maintenance problems at or above a threshold of 1 percent of the 2008 75-ppb NAAQS and, therefore, additional emission reductions, as compared to the original CSAPR Update, are required from these 12

states. The emission reductions called for in the final revised rule are required at electric-generating units (EGUs) (no reductions are required from non-EGU sources) and, different from the proposed rule, are based on optimization of existing, already-installed selective catalytic converter and selective non-catalytic converter controls starting with the 2021 ozone season, as well as installation of or upgrade to state-of-the-art NO_x combustion controls starting with the 2022 ozone season. EPA will issue new or amended FIPs for these 12 states to replace their existing CSAPR NO_x Ozone Season Group 2 emission budgets for EGUs with revised budgets under a new CSAPR NO_x Ozone Season Group 3 Trading Program. Implementation of the revised emission budgets is required beginning with the 2021 ozone season. The final rule includes state-by-state adjusted ozone season emission budgets for 2021 through 2024. EPA states in the final rule its determination that based on its assessment of remaining air quality issues and additional emission control strategies for EGUs and other emissions sources in other industry sectors (non-EGUs), “these NO_x emission reductions fully eliminate these states’ significant contributions to downwind air quality problems for the 2008 ozone NAAQS.” EPA estimates that the Final Revised CSAPR Update will reduce summertime NO_x emissions from power plants in the 12 covered states by 17,000 tons in 2021. The final rule accompanied by other changes already underway in the power sector will result in a 19-percent reduction in NO_x emissions in 2021 compared to 2019 – about 25,000 tons. The agency further estimates that in 2025 these emission reductions will prevent nearly 300,000 asthma events, over 550 hospital and emergency room visits, 110,000 missed work and school days and as many as 230 premature deaths. The monetized public health and climate benefits are, on average, up to \$2.8 billion per year from 2021 to 2040. Over the same time period, the annualized costs are estimated, on average, at \$25 million. For further information:

<https://www.epa.gov/csapr/revised-cross-state-air-pollution-rule-update>

(2) NESCAUM Releases Assessment of EPA’s Residential Wood Heater Certification Program (March 15, 2020) – The Northeast States for Coordinated Air Use Management (NESCAUM) released a report detailing the results of the organization’s work, and that of the Alaska Department of Environmental Conservation (DEC), over the past year to assess the veracity of test reports attesting to the certification of residential wood heaters (RWHs) to the “Step 2” New Source Performance Standards (NSPS) established in 2015 and effective as of May 15, 2020, as well as EPA’s oversight of the certification testing program. The 2015 NSPS rule put in place a third-party accreditation and review process for certification testing. NESCAUM and Alaska DEC completed a review of nearly 250 RWH test reports and found that every one of the reviewed reports contained multiple deficiencies, raising serious concerns about the overall validity of certification testing and, more broadly, the compliance of Step 2 RWHs with the 2015 NSPS and whether the intended emission reductions are occurring. In *Assessment of EPA’s Residential Wood Heater Certification Program*, NESCAUM states that the “report finds a systemic failure of the entire certification process” and that 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.” For further information:

<https://www.nescaum.org/documents/nescaum-review-of-epa-rwh-nspc-certification-program-202103.pdf/>

(3) EPA Asks D.C. Circuit to Vacate GHG “Significant Contribution” Rule (March 17, 2021) – EPA filed an unopposed motion in the U.S. Court of Appeals for the District of Columbia Circuit to vacate and remand the Trump Administration’s final rule that established a numerical threshold for determining whether a source category’s greenhouse gas (GHG) emissions “contribute significantly” to air pollution, thus making them subject to regulation under Section 111(b) of the Clean Air Act. Specifically, the rule provides that source categories may only be considered to contribute significantly to air pollution due to their GHG emissions if the amount of those emissions exceeds 3 percent of total U.S. GHG emissions. Source categories that emit below the 3-percent significance threshold are considered “necessarily insignificant without consideration of any other factors.” Under EPA’s supporting analysis, that would mean all stationary source categories other than electric generating units (EGUs) are currently exempt from regulation under Section 111. In its motion for voluntary vacatur and remand, EPA now asserts that the rule was unlawful because the agency failed to provide public notice or opportunity to comment on its central elements. When the rule was published on January 13, EPA claimed that it was an outgrowth of a December 2018 proposed rule to replace the existing Section 111(b) GHG New Source Performance Standards (NSPS) for new, reconstructed and modified EGUs with less stringent emission limits. However, the final rule did not revise the GHG NSPS for EGUs or the underlying “best system of emission reduction” determinations, but focused instead on the significance issue. “The Agency’s acknowledged failure to weigh relevant data and potential objections to proposed significance criteria in any respect before finalizing them is precisely the sort of error” that warrants exercise of the court’s authority to vacate the rule prior to briefing on the merits, EPA argues. Vacatur is also appropriate, the agency contends, because EPA does not intend to cure the procedural defect through additional rulemaking. Further, it states, even if EPA were to conclude that pollutant-specific significance criteria were appropriate, the agency would not re-propose the existing rule. The states, cities and environmental groups challenging the rule in the D.C. Circuit have consented to EPA’s requested relief. For further information:

http://www.4cleanair.org/sites/default/files/Documents/California_v_EPA-Motion_for_Vacatur_3-17-21.pdf

(4) Ninth Circuit Allows Hawaii Climate Cases to Continue in State Court While Appeal is Pending (March 13, 2021) – The U.S. Court of Appeals for the Ninth Circuit denied motions by Chevron and other energy companies to halt cases brought against them in Hawaii state court by the City and County of

Honolulu and the County of Maui alleging, among other things, concealment of the dangers that fossil fuels pose to the climate. The ruling is a blow to the defendant oil companies, which would prefer to litigate the cases in federal court. When the cases were originally filed, the defendants removed both of them to federal district court. The district court, however, determined that it lacked subject-matter jurisdiction and remanded them back to the state court. The defendants then appealed the remand order to the Ninth Circuit and filed motions for emergency orders to stay the cases pending resolution of the appeal. The Ninth Circuit has now rejected both stay motions on grounds that the defendants failed to establish that they will suffer irreparable injury absent a stay of the remand order.

“Appellants argue that, if the cases are remanded, the parties will be required to litigate the merits of Appellees’ claims in state court simultaneously with these appellate proceedings, which will lead to increased litigation burdens and possible inefficiencies if this court later finds that the cases were properly removed. These considerations, however, do not rise to the level of irreparable harm,” the court determined. For further information:

[http://www.4cleanair.org/sites/default/files/Documents/Honolulu v Sunoco 9th Cir. Order 3-13-21.pdf](http://www.4cleanair.org/sites/default/files/Documents/Honolulu_v_Sunoco_9th_Cir_Order_3-13-21.pdf)

(5) EPA to Restart IRIS Assessment of Formaldehyde (March 12, 2021) –

EPA’s Office of Research and Development plans to restart a health risk assessment of formaldehyde that the agency suspended in 2018. The review of the formaldehyde risk assessment will be reinstated on the current agenda for EPA’s Integrated Risk Information System (IRIS). The risk information for the chemical will have to be updated as part of the process, since the effort has been suspended for several years. The decision was announced in an EPA memo from Jennifer Orme-Zavaleta, Acting Assistant Administrator for the EPA Office of Research and Development. In March 2019, the Government Accountability Office issued a report stating that EPA had delayed progress in assessing certain chemicals under IRIS review, including several that were in the later stages of development. This included formaldehyde, which had been under assessment for over a decade. In response, Senator Thomas Carper (D-DE) and other Members of Congress wrote to EPA calling for the formaldehyde assessment to be issued.

For further information: <https://www.gao.gov/assets/700/697212.pdf>,
<https://www.carper.senate.gov/public/cache/files/d/8/d85d2332-eb76-457b-9357-0ca9287941d4/CAABAB95A210F123C71A45FA3DB8D84C.letter-to-administrator-wheeler-3-4-18.pdf>

(6) House GOP Energy Package Introduced (March 15, 2021) - In response to energy legislation introduced by Democrats in the U.S. House of Representatives Committee on Energy and Commerce, Republicans on the Committee released a suite of legislation that contains 18 separate bills with 15 lead sponsors, which are focused on energy innovation, restrictions on federal permitting processes, nuclear and hydropower energy incentives, and promoting oil and natural gas development. It also includes legislation that would expand federal investments in developing carbon capture, utilization, and storage and would reduce the applicability of New Source Review permitting. Each of the proposed bills have

been previously introduced in Congress without passage. The GOP package was announced by Ranking Member of the House Energy and Commerce Committee Cathy McMorris Rodgers (R-WA), Ranking Member of the Energy Subcommittee Fred Upton (R-MI), and Ranking Member the Environment and Climate Change Subcommittee David McKinley (R-WV). For further information:

https://republicans-energycommerce.house.gov/wp-content/uploads/2021/03/Securing_Cleaner_American_Energy.pdf

(7) International Technology Company Reports COVID-19 Lockdowns Resulted in Improved Air Quality in 84 Percent of Countries Worldwide

(March 16, 2021) – IQAir released the *2020 World Air Quality Report*, providing an analysis of PM_{2.5} data reported by ground-level air monitoring stations located in 106 countries around the world and aggregated through the company’s air quality information platform. The purpose of the report, says IQAir, is “to highlight a wide variety of air quality challenges as well as underscore the threat of human-caused air pollution. Raising air pollution awareness empowers people to take action to improve air quality and reduce their personal exposure.” Based on the data presented, IQAir highlights the impact of COVID-related lockdowns and behavioral changes on global PM_{2.5} levels, including that in 2020, 84 percent of all monitored countries observed improvements in air quality “largely due to global measures to slow the spread of COVID-19.” Examples include Paris, which experienced a 17-percent decrease in PM_{2.5} from 2019 levels; Seoul and London, which each experienced a 16-percent decrease; Delhi, a 15-percent decrease; Chicago, a 13-percent decrease; and Beijing, an 11-percent decrease. IQAir also reports that, overall, average particulate levels in the U.S. increased by 6.7 percent in 2020, notwithstanding measures to limit the spread of COVID; record-breaking wildfires in the West “caused U.S. cities to comprise 77 of the world’s 100 most polluted cities in September 2020 (by monthly PM_{2.5} average).” IQAir describes itself as “a Swiss-based air quality technology company empowering individuals, organizations and communities to breathe clean air through information and collaboration. Since its founding in 1963, IQAir has been a global leader and operates in more than 100 countries worldwide.” For further information:

<https://www.iqair.com/us/world-air-quality-report>

(8) FERC Order Weighs Pipeline Climate Impacts (March 17, 2020) – In a 3-2 vote, the Federal Energy Regulatory Commission (FERC) has voted to approve an order that assesses the greenhouse gas (GHG) emissions from a fossil gas pipeline as part of its proceedings. This represents the first time FERC has considered the climate implications of a fossil gas pipeline’s greenhouse gas emissions in an order. In the past, FERC, which regulates the construction of gas pipelines and facilities, had declined to assess how the emissions from pipeline and liquified natural gas projects would contribute to climate change in its permitting proceedings. FERC Chairman Rich Glick, who was named the commission’s chairman by the Biden Administration earlier this year, had said in a dissent from previous orders that FERC “cannot claim to have adequately addressed the public interest without addressing the significance” of climate change. In its approval for Northern Natural Gas Company’s proposal for replacing

87 miles of an existing fossil gas pipeline, the commission order found that the project's greenhouse gas emissions would not be significant. Glick and Democratic appointee Commissioner Alison Clements were joined by Commissioner Neil Chatterjee, a Republican appointed as commission chairman under the Trump Administration, in approving the order. Republican Commissioners James Danly and Mark Christie dissented from the ruling, asserting that the assessment of greenhouse gas emissions lies outside FERC's authority. "Going forward, we are committed to treating greenhouse gas emissions and their contribution to climate change the same as all other environmental impacts we consider," Glick said in a statement accompanying the order. The pipeline is operated by Northern Natural Gas Company between South Sioux City, Nebraska, and Sioux Falls, South Dakota. For further information:

<https://ferc.gov/news-events/news/ferc-reaches-compromise-greenhouse-gas-significance>

(9) 2020 Industrial Energy Star Awardees Named (March 18, 2021) – U.S. manufacturing plants in 35 states and Puerto Rico have been awarded ENERGY STAR certification in 2020 by EPA. The certifications include facilities in the automotive, food, construction material, chemical, and pharmaceutical sectors. Taken together, the 95 facilities given ENERGY STAR certification saved nearly \$400 million and avoided the consumption of 80 trillion Btus of energy and 5 million metric tons of GHG emissions in 2020. For further information:

https://www.energystar.gov/industrial_plants/energy_star_plant_certification/list_certified_plants/certifiedplants2020

(10) Haaland Confirmed as Secretary of Interior (March 16, 2021) – Following a 51-40 confirmation vote in the U.S. Senate, Debra Anne Haaland has been sworn in as the 54th U.S. Secretary of the Interior. Haaland (D-NM), who was elected to the U.S. House of Representatives serving New Mexico's 1st district in 2018, is a member of the Laguna Pueblo nation. During her confirmation hearings she noted that federal lands account for 25% of US carbon dioxide emissions, arguing that there are "far too many extractive industry leases and not enough renewable energy leases". During her tenure in Congress, then-Rep. Haaland introduced bills limiting fossil fuel development and mine leasing on federal lands, and calling for environmental justice actions to be undertaken by the federal government. "Together, we will work to advance President Biden's vision to honor our nation-to-nation relationship with Tribes, address the climate and nature crises, advance environmental justice, and build a clean energy future that creates good-paying jobs and powers our nation" Haaland said in a statement following her swearing in. For further information: <https://www.doi.gov/news/statement-deb-haaland-becoming-54th-interior-secretary>

(11) EPA Reboots Climate Change Page (March 18, 2021) – EPA announced that they have relaunched the agency's climate change website. The site addresses climate data, reports, and resources and provides links to several federal resources and programs that address mitigation and adaptation. The website had been altered between January and April 2017 to remove a number of

the pages, links, resources and materials, although an archive of the pre-2017 website was retained by the EPA. An EPA press release stated “For the first time in four years, EPA now has a webpage to guide the public to a range of information, including greenhouse gas emissions data, climate change impacts, scientific reports, and existing climate programs within EPA and across the federal government.” For further information: <https://www.epa.gov/climate-change>

The Week Ahead

- [House Energy and Commerce Committee Hearing on H.R. 1848, the "Leading Infrastructure for Tomorrow's America Act: Revitalizing Our Nation's Infrastructure and Economy"](#) – March 22, 2021
- [House Committee on Appropriations Subcommittees on Military Construction, Veterans Affairs, and Related Agencies Hearing on Remediation and Impact of PFAS](#) – March 24, 2021
- [House Committee on Energy and Commerce Subcommittee on Energy of the Committee on Energy and Commerce Hearing on the CLEAN \(Climate Leadership and Environmental Action for Our Nation's\) Future Act: Powering a Resilient and Prosperous America"](#) – March 24, 2021
- [Resources for the Future Webinar on "Environmental Justice: Lessons from History and a Look to the Future"](#) – March 24, 2021
- [Senate Committee on Commerce, Science, and Transportation Hearing on "Driving the Road to Recovery: Rebuilding America's Transportation Infrastructure"](#) – March 24, 2021

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