

In this week's Washington Update:

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This Week in Review

(1) NACAA Advises NHTSA to Take Swift Action to Repeal "SAFE 1" Rule

(June 10, 2021) – NACAA submitted comments to the National Highway Traffic Safety Administration (NHTSA) on the agency's May 12, 2021 notice of proposed rulemaking (NPRM) to repeal the September 2019 Safer Affordable Fuel-Efficient Vehicles Rule ("SAFE 1"). "SAFE 1" was a joint rulemaking by NHTSA and EPA "in which NHTSA codified regulatory text and made additional pronouncements regarding the preemption of state and local laws related to fuel economy standards." NHTSA says it proposed its current action because, after conducting a comprehensive review of, and reconsidering, the actions it took in "SAFE 1," it has "significant concerns" and "substantial doubts" about whether "SAFE 1" was a proper exercise of its statutory authority regarding preemption under the Energy Policy and Conservation Act. In its comments, NACAA states, "NHTSA is correct in arriving at these conclusions because it lacks the authority for its 'SAFE 1' preemption rule and must take swift action to finalize this proposal." For further information:

http://www.4cleanair.org/sites/default/files/Documents/NACAA_Comments-NHTSA_Proposed_Repeal_of_SAFE_1-061021.pdf

(2) EPA Will Reconsider Previous Administration's Decision to Retain 2012

PM NAAQS (June 10, 2021) – EPA Administrator Michael S. Regan announced that EPA will reconsider the December 2020 decision of the previous administration to retain without revision the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM), last strengthened in 2012. Administrator Regan says the agency will "move expeditiously" on the reconsideration and will adhere to "rigorous standards of scientific integrity" and provide "ample

opportunities” for public input and engagement. This initiative will include development of a supplement to the 2019 Final Integrated Science Assessment (ISA) to take into account the most up-to-date science, including emerging research related to COVID. The supplement to the ISA will be reviewed by the Clean Air Scientific Advisory Committee (CASAC), which will be supported by a PM Review Panel of experts. CASAC and the PM Review Panel will also review a revised Policy Assessment and develop comments to advise Administrator Regan. EPA expects to issue a proposed rule on its reconsideration in summer 2022 and a final rule in spring 2023 and has specifically noted that “the agency will be considering environmental justice during the rulemaking process.” For further information: <https://www.epa.gov/newsreleases/epa-reexamine-health-standards-harmful-soot-previous-administration-left-unchanged>

(3) EPA Issues Advance Notice of Proposed Rulemaking for Adding 1-Bromopropane to HAP List (June 11, 2021) – EPA has issued an Advance Notice of Proposed Rulemaking (ANPRM) that seeks information about the agency’s plan to add 1-bromopropane (1-BP) to the list of hazardous air pollutants (HAP) under Section 112 of the Clean Air Act (86 Fed. Reg. 31,225). EPA announced in June 2020 that it had approved two petitions to list 1-BP but it did not take further action to add the pollutant at that time. While the notice does not propose new regulations or requirements, it announces that EPA intends to complete the listing of 1-BP by December 31, 2021. This would be the first time EPA has added a substance to the HAP list and the agency notes that the addition of 1-BP “could have immediate regulatory compliance impacts to facilities that emit 1-BP.” The ANPRM requests information from stakeholders and the public about the numbers and types of emission sources currently using 1-BP; source categories that may use 1-BP; potential impacts to facilities from current air toxics regulations; possible impacts on permitting programs, including changes in major source status; and potential impacts to small businesses, tribes and environmental justice communities. EPA also noted that the General Provisions may need to be revised, since they may not be sufficient currently to effectively and efficiently address the addition of the new pollutant. EPA will accept public comment on the ANPRM until July 26, 2021. For further information: <https://www.govinfo.gov/content/pkg/FR-2021-06-11/pdf/2021-12287.pdf> and <https://www.epa.gov/haps/petitions-add-1-bp-npb-clean-air-act-list-hazardous-air-pollutants>

(4) EPA Administrator Testifies Before Senate Appropriations Subcommittee on EPA’s FY 2022 Budget Proposal (June 9, 2021) – EPA Administrator Michael Regan testified before the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies regarding the Administration’s proposed FY 2022 budget. The budget proposal calls for \$11.2 billion for EPA’s budget (compared to \$9.2 billion in FY 2021) and \$321.5 million for air quality grants (compared to \$229.5 million in FY 2021). Regan’s testimony supported the funding levels in the Administration’s proposal, including the emphasis being placed on environmental justice and equity. He also reported that the budget request would allow EPA to add approximately 1,000 new staff members, which

will address some of the significant staffing losses of recent years, as well as a large number of expected retirements in coming years. During the hearing, which was not contentious or lengthy, several of the Senators raised concerns about issues facing their own states, few of which related to air quality. However, with respect to air quality, Senator Lisa Murkowski (R-AK) expressed concerns about air pollution from woodstoves and raised issues about the certification of stoves. She also noted that the Targeted Airshed Grant program has been helpful. Several Senators expressed support for the Diesel Emission Reduction Act (DERA) grant program, for which the Administration has requested \$150 million (compared to \$90 million in FY 2021). For further information:

<https://www.appropriations.senate.gov/hearings/fiscal-year-2022-budget-request-for-the-environmental-protection-agency>

(5) EPA OIG Evaluates Impacts of COVID on Mobile Source Compliance Program (June 7, 2021) – EPA’s Office of Inspector General (OIG) issued a report in which it provides the outcome of its evaluation of the impact of the coronavirus pandemic on the agency’s ability to oversee compliance by mobile sources with clean air laws and regulations. In particular, OIG focused on operations and testing at the agency’s National Vehicle and Fuel Emissions Laboratory (NVFEL) in Ann Arbor, which is run by the Office of Transportation and Air Quality (OTAQ). NVFEL was closed from March through September 2020; after it reopened, fewer than half of the staff was onsite (only to conduct work that could not be performed remotely) and largely not full time. In its report, OIG examines the impact of the limited operation on vehicle and engine testing; fuels testing; guidance letters to manufacturers in response to the coronavirus pandemic; application of existing flexibilities and compliance oversight; regulatory development; and enforcement referrals. According to EPA OTAQ, the greatest challenges it faced in supporting the compliance programs were the inability to conduct testing at NVFEL and the inability of staff to travel. Nonetheless, OIG concludes the following in its report: “NVFEL has faced and continues to face challenges in adapting to the coronavirus pandemic while maintaining a strong compliance presence and engaging with the regulated community. While there have been impacts due to the pandemic, including laboratory closure, NVFEL mitigated these impacts on its compliance programs.” For further information: https://www.epa.gov/sites/production/files/2021-06/documents/_epaig_20210607-21-e-0158report.pdf

(6) EPA Rescinds Rule Reforming Environmental Appeals Board Permit Review Process (June 9, 2021) – EPA is reversing most of a rule finalized in August 2020 that curtailed the authority of the Environmental Appeals Board (EAB) in reviewing challenges to EPA-issued permits (and permits issued on behalf of EPA, including by states exercising delegated CAA permitting authority). After reviewing the rule in accordance with President Biden’s Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” EPA determined that the 2020 EAB Rule “adversely affects the administration of the Agency’s appeals process and procedures,” and that rescission is therefore warranted. The 2020 EAB Rule

made a number of key changes to EAB's procedures, including: 1) eliminating EAB's authority to review an exercise of discretion or an "important policy consideration" and limiting its scope of review to findings of fact and conclusions of law that are "clearly erroneous"; 2) eliminating EAB's authority to review regional permit decisions on its own initiative absent a private party appeal; 3) creating a mechanism by which the EPA Administrator can issue a dispositive legal interpretation in any matter pending before the EAB or on any issue addressed by the EAB; 4) establishing a 60-day deadline for the EAB to issue a final decision once an appeal has been fully briefed and argued, with the ability to grant itself a one-time 60-day extension; 5) limiting the availability of filing extensions to one request per party, with a maximum extension of 30 days; 6) setting 12-year term limits for EAB judges (renewable by the EPA Administrator); and 7) establishing a process for designating certain EAB decisions for publication. In a final rule issued on June 9 and published in the *Federal Register* on June 11 (86 Fed. Reg. 31,172), EPA reversed those changes and reverted the regulations pertaining to the EAB's function and process to the prior existing regulatory text. The action does not, however, alter provisions in the 2020 EAB Rule that made the permit appeal procedures in 40 C.F.R. § 124.19 applicable to permits issued to tribes in Indian Country under part 49 (for minor and non-attainment NSR permits) and to Title V permits issued under part 71. "The reversion of the regulatory text will better safeguard the EAB's ability to efficiently and effectively manage the appeals process and ensure the integrity of Agency decisionmaking, advance environmental justice, and protect public health and the environment, in accordance with the mission of the Agency," EPA stated in the rescission rule's preamble. As a procedural, rather than a substantive rule, the rescission rule became effective immediately upon publication. For further information: <https://www.govinfo.gov/content/pkg/FR-2021-06-11/pdf/2021-12291.pdf> and https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf

(7) Seventeen States Move to Intervene in Kids' Climate Case to Prevent "Collusive" Settlement (June 8, 2021) – Citing the risk of a potentially collusive settlement agreement between climate-change plaintiffs and the federal government, seventeen Republican-led states moved to intervene in a lawsuit brought by 21 youths and environmental groups that seeks to compel the United States to take aggressive remedial action to combat climate change. The lawsuit, *Juliana v. United States*, was filed in the U.S. District Court for the District of Oregon in 2015. In 2020, the U.S. Court of Appeals for the Ninth Circuit ruled on an interlocutory appeal that the suit must be dismissed because the plaintiffs lacked Article III standing to sue, in that their injuries were unlikely to be redressed by the relief sought. The court further held that it was beyond the power of the judicial branch to order the federal government to implement the plaintiffs' requested injunctive relief – namely, a plan to phase out fossil fuels and reduce atmospheric carbon dioxide. Subsequently, the plaintiffs sought to amend their complaint in the district court, and the district court scheduled a settlement conference between the parties for June 23, 2021. The seventeen states that now seek to intervene in the lawsuit – Alabama, Alaska, Arkansas, Georgia, Indiana, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio,

Oklahoma, South Carolina, Texas, Utah and West Virginia – claim that the district court disobeyed the Ninth Circuit’s instructions when it failed to dismiss the suit. They argue that their limited intervention is now necessary “to ensure their interests are not undermined through settlement of a dispute that this Court lacks jurisdiction to adjudicate.” They assert that since President Biden’s inauguration, “the federal government has repeatedly used unprecedented, collusive litigation maneuvers to avoid the legal processes our government must normally respect before implementing new policies.” They express concern that the “striking breadth” of the plaintiffs’ claims “provides Defendants a tantalizing opportunity to try to alter nationwide energy policy under the guise of settling a case they already won,” and argue that the federal government under the new Administration can no longer be relied upon to adequately represent their interests in the litigation. Allowing the states to participate in the case would offer a “necessary element” to the upcoming settlement proceedings, they argue – “namely, a party fully committed to ensuring that any overhaul of our national energy system be made by the People’s elected representatives, rather than by collusive litigants” (internal citations omitted). For further information:

http://www.4cleanair.org/sites/default/files/Documents/Juliana_v_United-States-D_Or_States_Intervention_Motion_6-8-21.pdf

(8) CRA Repeal of Oil & Gas Methane Rollback Advances on Capitol Hill

(June 10, 2020) - The U.S. House of Representatives Committee on Energy and Commerce has advanced a resolution under the Congressional Review Act to reverse EPA’s September 14, 2020 rule, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review (85 Fed. Reg. 57018) and restore the New Source Performance Standards (NSPS) set in 2012 and 2016 governing emissions of methane and VOCs from the oil and gas sector. The committee voted 30-22 in favor of the resolution (H.J. Res. 34) providing for congressional disapproval of the EPA’s September 2020 action. The resolution was sponsored by Rep. Diana DeGette (D-CO). The full U.S. House of Representatives will consider the resolution the week of June 22; the U.S. Senate passed its version of the resolution on May 25, 2020, introduced by Sen. Martin Heinrich (D-NM). For further information:

<https://energycommerce.house.gov/committee-activity/markups/markup-of-6-bills-full-committee-june-10-2021>

The Week Ahead

- [EPA Clean Air Act Advisory Committee Subcommittee on Mobile Sources Technical Review Subcommittee Virtual Meeting](#) – June 15, 2021
- [House Committee on Natural Resources Subcommittee on Energy and Mineral Resources Virtual Hearing on Environmental Justice for Coal Country: Supporting Communities Through the Energy Transition](#) – June 15, 2021

- [2021 Annual Joint Virtual Meeting of the Ozone Transport Commission \(OTC\) and the Mid-Atlantic Northeast Visibility Union \(MANE-VU\)](#) – June 15, 2021
 - [Washington Post Live Virtual Discussion on "Climate Solutions: A Conversation with Sylvia Earle," President and Chair, Mission Blue](#) – June 15, 2021
 - [Senate Committee on Environment and Public Works Hearing on EPA and Commerce Department Nominations](#) – June 16, 2021
 - [EPA's National Environmental Justice Advisory Council \(NEJAC\) Virtual Public Meeting](#) – June 17, 2021
 - [Environmental and Energy Study Institute Virtual Discussion, "Towards the Energy System of Tomorrow: Modernizing the U.S. Energy System: Opportunities, Challenges, and the Path Forward"](#) – June 18, 2021
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