

In this week's Washington Update:

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This Week in Review

(1) EPA Announces \$50-Million in Air Grant Programs under the American Rescue Plan (July 7, 2021) – EPA has announced details about how it will distribute \$50 million in grants provided by the American Rescue Plan (ARP) to states, localities, tribes and communities for improvements to ambient air quality monitoring across the country. The funding is half of a total of \$100 million provided to EPA to tackle health outcome disparities from pollution and the COVID–19 pandemic as part of the ARP, which was signed into law on March 11, 2021. The \$50-million monitoring program has four major components:

- \$22.5 million in direct awards to state, local or tribal air agencies. These grants will be for enhanced monitoring of fine particulate matter and other criteria pollutants. They are intended to support monitoring in and near environmental justice communities that face disproportionate exposure and health risks, which are also associated with increased vulnerability to COVID.
- \$20 million in competitive grants for community monitoring. Community groups and state, local and tribal air agencies are eligible for the funds, individually or in partnerships. The grants are for monitoring pollutants of greatest concern in areas with disparities in health outcomes.
- \$5 million for mobile monitoring labs or air sensor loan programs. EPA expects these efforts to help communities in need of short-term monitoring and air pollution information.
- \$2.5 million in administrative support and oversight. The funds are intended to improve data management and help the agency properly administer and track the grants.

EPA will coordinate with state, local and tribal air agencies and communities and expects to call for grant proposals in the fall of 2021. In addition to the \$50 million for air quality monitoring, the ARP provided \$50 million for environmental justice (EJ) initiatives. On July 25, 2021, EPA announced details about the distribution of

those funds to states, local jurisdictions, tribes and other entities for a variety of EJ programs. NACAA played a role in developing this funding. For further information: <https://www.epa.gov/amtic/american-rescue-plan> and <https://www.epa.gov/newsreleases/epa-announces-50-million-fund-environmental-justice-initiatives-under-american-rescue>

(2) EPA Issues Memorandum Providing Information on Regional Haze SIP Development for Second Implementation Period (July 8, 2021) – EPA issued a memorandum addressing questions raised by air agencies and other stakeholders following EPA’s 2017 revisions to the Regional Haze Rule and its August 2019 *Guidance on Regional State Implementation Plans for the Second Implementation Period*. The memorandum, titled “Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period,” seeks to share the types of issues being raised by EPA Regions and others with respect to draft State Implementation Plans (SIPs) and to offer feedback to help support SIP development, submittal, review and action for the second planning period. Primary topical headings in the memorandum include: selection of sources for analysis; characterization of factors for emission control measures; decisions on what control measures are necessary to make reasonable progress; and additional issues related to assessing control measures. EPA will hold a webinar for its regional offices, state, local and tribal air agencies and Federal Land Manager representatives on July 13, 2021 from 3:00 to 4:00 p.m. Eastern. Registration information was distributed to NACAA members via email from Miles Keogh on July 9. For further information: <https://www.epa.gov/visibility/clarifications-regarding-regional-haze-state-implementation-plans-second-implementation>

(3) EPA Office of Inspector General Recommends Increased EPA Oversight of Synthetic-Minor-Source Permitting (July 8, 2021) – A report issued by EPA’s Office of Inspector General following an audit of 16 synthetic-minor-source permits issued by Colorado and Oklahoma for the natural gas extraction industry found that many permits did not adhere to EPA guidance and that EPA had not communicated several key expectations for synthetic-minor-source permitting to state and local air agencies. OIG further found that Oklahoma and potentially other states did not allow the public to participate in the permitting process for some synthetic-minor-source permits, in contravention of the Clean Air Act. Synthetic minor sources are facilities that agree to restrictions in their permits to reduce their emissions below major-source thresholds in order to avoid being subject to CAA major-source permitting rules. The OIG report recommends that EPA: 1) develop and implement an oversight plan for synthetic-minor-source permitting; 2) update its practical enforceability guidance; 3) assess EPA studies and other relevant information on closed combustion devices during its next review of applicable regulations to determine whether revisions to monitoring, record-keeping, and reporting requirements are needed; 4) develop and issue new guidance that includes key EPA expectations for synthetic-minor-source permitting; and 5) take steps to assure that all states adhere to public participation requirements for synthetic-minor permits. EPA has agreed to address all of the

recommendations and corrective actions are pending. For further information: <https://www.epa.gov/office-inspector-general/report-epa-should-conduct-more-oversight-synthetic-minor-source-permitting>

(4) D.C. Circuit Strikes Down EPA Rule Provision Allowing Year-Round Sale of E15 (July 2, 2019) – The U.S. Court of Appeals for the District of Columbia Circuit held that EPA exceeded its authority in a 2019 rule authorizing the year-round sale of E15 fuel – gasoline blended with up to 15 percent ethanol. The “E15 Rule” was issued by EPA after President Trump directed the agency to consider modifying the volatility limits for E15 so it could “be sold year-round rather than just eight months of the year.” The rule was immediately challenged in the D.C. Circuit by the American Fuel & Petrochemical Manufacturers. In a unanimous decision by a three-judge panel, the court vacated Section II of the rule, in which EPA announced a new statutory interpretation of when limits on fuel volatility can be waived and relatedly reinterpreted the term “substantially similar” in order to allow for year-round sales of E15, by finding that E15 is substantially similar to E10. The court determined that the text, structure and legislative history of Section 211(h)(4) of the Clean Air Act foreclose EPA’s application of the statute’s 1-pound-per-square-inch (psi) Reid Vapor Pressure waiver for E10 during the summertime ozone season (May 1 through September 15). It also found that Section II of the rule is severable from Section III, which addresses the renewable identification number market; that portion of the regulation remains in place. For further information: <https://www.4cleanair.org/wp-content/uploads/American-Fuel-Petrochemical-Manufacturers-v.-EPA-D.C.-Cir.-Opinion-7-2-21.pdf>

(5) Six Democratic-Led States Oppose Effort by 19 Republican-Led States to Block Settlement Agreement in Kids’ Climate Case (July 6, 2021) – Six states with Democratic attorneys general – New York, Delaware, Hawai’i, Minnesota, Oregon and Vermont – filed an *amicus* brief in the U.S. District Court for the District of Oregon in which they challenge assertions made by 19 Republican-led states that seek to intervene in the case in order to prevent a “collusive” settlement agreement between the plaintiffs and the federal government (see related article in the June 5-11, 2021 *Washington Update*). The lawsuit, *Juliana v. United States*, was filed in 2015 by 21 youths and environmental groups that seek to compel the United States to take aggressive remedial action to combat climate change. In 2020, the Ninth Circuit ruled on an interlocutory appeal that the suit must be dismissed, and remanded it to the district court. The district court subsequently instructed the parties to enter settlement negotiations. In their *amicus* brief, the six Democratic states argue against the movant-intervenor states’ assertions that the federal government has recently engaged in collusive litigation tactics to achieve the Biden Administration’s policy goals. They also challenge what they characterize as the proposed intervenors’ “incomplete description” of the state interests implicated by policies addressing climate change. “Proposed intervenors assert that they will suffer adverse economic consequences from any settlement of this case that results in curtailing the use of fossil fuels,” they write, “but they ignore the States’ recognized interest in combatting the adverse effects of climate change.” They conclude, “States have a broad and unique range of interests in

federal action to combat the wide-ranging effects of climate change – including the costs of combatting rising sea levels, the health risks posed by rising temperatures, and threats to States' food and water supplies, among others – that are not reflected in proposed intervenors' statement of interests." For further information: <https://www.4cleanair.org/wp-content/uploads/Juliana-v.-United-States-D.-Or.-States-Amicus-Brief-7-6-21.pdf>

(6) Congressional Ethylene Oxide Task Force Urges Consistent EPA Action and Requests Meeting with Administrator (July 8, 2021) – Eight Members of the House of Representatives' bipartisan Congressional Ethylene Oxide (EtO) Task Force sent a letter to EPA Administrator Michael Regan requesting a meeting to discuss EPA's efforts to address EtO and the concerns of the task force. They stated that EPA has had an "inconsistent approach to how it assisted communities facing EtO emissions" since 2018. While air monitoring was conducted in Willowbrook, IL, other areas that face potentially dangerous emissions have not received similar attention. The letter identifies five principles that the task force believes should guide EPA's efforts on EtO: 1) EtO regulations must be guided by the need to protect public health and EPA should begin with a risk and technology review as part of rulemaking for the sterilization category; 2) ambient air monitoring is critical to identifying community exposure; 3) community engagement should be a central part of EPA's EtO efforts; 4) industry efforts to "dilute or undermine the findings of the Integrated Risk Information System (IRIS) assessment on EtO" are of concern; and 5) the sterilization rule should reflect the diversity of businesses within the medical device sterilization supply chain. The letter was signed by members of the task force, including Reps. Brad Schneider (D-IL), Jody Hice (R-GA), Lauren Underwood (D-IL), Susan Wild (D-PA), David Scott (D-GA), Sean Casten (D-IL), Bill Foster (D-IL) and Hank Johnson (D-GA). For further information: <https://schneider.house.gov/media/press-releases/schneider-leads-bipartisan-letter-urging-epa-address-harmful-effects-ethylene>

The Week Ahead

- [House Committee on Energy and Commerce Subcommittees on Energy and Environment and Climate Change Hearing on "Keeping Us Safe and Secure: Oversight of the Nuclear Regulatory Commission"](#) – July 14, 2021
 - [Bipartisan Policy Center Virtual Discussion on "Building Faster to Achieve Net-Zero"](#) – July 13, 2021
 - [United States Energy Association Virtual Discussion on "Using Renewables to Operate a Low-Carbon Grid: Demonstration of Advanced Reliability Services from Utility-Scale Solar PV and Utility-Scale Wind Plants"](#) – July 13, 2021
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