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This Week in Review

(1) EPA Releases NPRM For Oil and Gas Sector Methane and VOC Regulations (November 2, 2021) - EPA has released a Notice of Proposed Rulemaking (NPRM) that regulates new and existing sources of methane emissions in the oil and natural gas sector. EPA's November 2, 2021 proposal, titled "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review", would set New Source Performance Standards (NSPS) for these methane sources, updating the 2016 NSPS and replacing the 2020 NSPS that was subsequently disapproved by congress using the Congressional Review Act in 2021. Methane is 30 to 90 times more potent at contributing to climate damage than CO₂. Atmospheric concentrations are currently 260% higher than during pre-industrial times and saw a 15 percent increase last year despite the pandemic. EPA's action follows a review directed by EO 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," issued on January 20, 2021. The NPRM would update and expand current requirements under Clean Air Act section 111(b) for methane and VOC emissions from new, modified, and reconstructed facilities, establishing new limits for currently unregulated facilities. It would accomplish this through updated and broadened methane and VOC emission reduction requirements for new, modified, and reconstructed oil and gas sources, including standards that limit emissions

from sources such as intermittent vent pneumatic controllers, associated gas, and well liquids unloading. Notably, the proposal will require companies to monitor 300,000 well sites (those which produce three tons or more per year of methane emissions annually) every three months, implement quarterly leak-testing at compressor stations, ban the venting of methane produced as a byproduct of crude oil into the atmosphere, and require upgrades to equipment such as storage tanks, compressors, and pneumatic pumps. The agency said the three ton threshold would capture sites responsible for 86 percent of leaks, and that other wells will have semiannual monitoring or survey requirements. It does not impose new limits on flaring, which the agency said it could explore in a later action. The proposal would also set requirements that states develop plans to limit methane emissions from hundreds of thousands of existing sources nationwide, along with presumptive standards for existing sources to assist in the planning process. EPA is also proposing national emissions guidelines for states that are “designed to inform States in the development, submittal, and implementation of State plans that are required to establish standards of performance for GHGs from their designated facilities in the Crude Oil and Natural Gas source category.” The EPA is also proposing to modify the 2016 NSPS to address amendments to the VOC standards to apply some of the 2020 Technical Rule amendments to the methane standards for all industry segments and to VOC standards for the transmission and storage segment in the 2016 NSPS. EPA is also proposing to require low production well sites and compressor stations to monitor fugitive VOC emissions. EPA also is requesting information on additional sources of methane for the Agency to consider in developing a supplemental proposal to reduce emissions further, and possibly expand them to include additional methane sources such as abandoned oil and gas wells, flares and tank truck loading. In addition, EPA is taking comment on how to structure a community monitoring program that would empower the public to detect and report large emission events as part of the future supplemental proposal. EPA plans to release that supplemental proposal in 2022 and follow with a final rule before the end of 2022. EPA asserts that, if enacted, the proposed rule would reduce 41 million tons of methane emissions from 2023 to 2035, the equivalent of 920 million metric tons of CO₂. EPA’s Regulatory Impact Analysis estimates the rule would yield net benefits of \$48 to \$49 billion from 2023 to 2035. EPA also estimates that from 2023 to 2035, the proposal would reduce VOC emissions by 12 million tons and hazardous air pollution by 480,000 tons. EPA will accept comments on the proposed rule for 60 days following publication in the *Federal Register* and the agency will hold a two-day public hearing on the 15th and 16th days after publication. For further information:

https://www.epa.gov/system/files/documents/2021-11/san-8510-ong-climate-review-proposal-frn-2021-11_1.pdf and <https://www.epa.gov/newsreleases/us-sharply-cut-methane-pollution-threatens-climate-and-public-health> and https://gml.noaa.gov/ccgg/trends_ch4/

(2) EPA Issues Eight Final Air Toxics Regulations and One Proposed Measure (November 1-2, 2021) – EPA has issued final regulations related to emissions of hazardous air pollutants for eight source categories and a proposal for a ninth. Several of the measures were final Risk and Technology Review

(RTR) standards, while the remainder were technical and typographical corrections to previously published RTR rules. RTR standards are designed to address the residual risk that remains eight years after the implementation of the Maximum Achievable Control Technology (MACT) standard as well as any new developments in controls since the establishment of the MACT. The main features of each of the rulemakings follow:

- Carbon Black Production: There are no changes to address residual risk or technology but minor amendments are made, including removing exemptions during periods of start-up, shutdown or malfunction (SSM), among others.
- Cyanide Chemical Manufacturing: There are no changes to address residual risk or technology but previously unregulated emission sources have been added. The rule also removes exemptions during SSM.
- Flexible Polyurethane Foam Fabrications: There are no changes to address residual risk, although there is one technology-related development that EPA is incorporating into the final rule. It also includes minor changes for both major and area sources and removes exemptions during SSM.
- Refractory Products Manufacturing: There are no changes to address residual risk, although there is one technology-related development that EPA is incorporating into the final rule. It also includes minor changes for both major and area sources and removes exemptions during SSM.
- Surface Coating of Automobiles and Light-Duty Trucks, Surface Coating of Metal Cans, Boat Manufacturing and Clay Ceramics Manufacturing: EPA is issuing minor technical corrections to address typographical errors to these four regulations issued in late 2019 and 2020. Since EPA believes the corrections will not change emission standards, they are being issued in final form without a prior proposal.
- Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources: EPA is proposing to find that there are no cost-effective control technology advancements, however the agency will propose minor changes to address SSM and other clarifying edits and updates to the existing rule. EPA will accept public comment on the rule for 45 after publication in the *Federal Register*.

For further information: Carbon Black <https://www.epa.gov/stationary-sources-air-pollution/acet-al-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen>, Cyanide Chemicals <https://www.epa.gov/stationary-sources-air-pollution/acet-al-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen>, Flexible Polyurethane Foam <https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission>, Refractory Products <https://www.epa.gov/stationary-sources-air-pollution/refractory-products-manufacturing-national-emissions-standards>, Surface Coating of Automobiles <https://www.epa.gov/stationary-sources-air-pollution/surface-coating-automobiles-and-light-duty-trucks-national> Surface Coating of Metal Cans <https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-cans-national-emission-standards-hazardous> Boat Manufacturing <https://www.epa.gov/stationary-sources-air-pollution/boat-manufacturing-national-emission-standards-hazardous-air> Clay Ceramics <https://www.epa.gov/stationary-sources-air-pollution/clay-ceramics-manufacturing-national-emission-standards>

[hazardous](https://www.epa.gov/stationary-sources-air-pollution/paint-stripping-and-miscellaneous-surface-coating-operations) and Paint Stripping <https://www.epa.gov/stationary-sources-air-pollution/paint-stripping-and-miscellaneous-surface-coating-operations>

(3) EPA Moves to Hold in Abeyance Cases Challenging 2020 Decision to Retain Ozone NAAQS Pending Agency Reconsideration, State Respondent-Intervenors Oppose Motion (October 29,2021) – EPA filed a motion in the U.S.

Court of Appeals for the District of Columbia Circuit to hold in abeyance, until December 23, 2023, litigation in which petitioners challenge the agency’s December 31, 2020, decision titled, “Review of the Ozone National Ambient Air Quality Standards,” in which EPA, under the Trump administration, retained the existing (2015) ozone NAAQS without revision. The reason for this motion is that the current EPA has determined that it will reconsider the December 2020 ozone NAAQS decision and intends to complete that effort by the end of 2023.

Accordingly, the agency has moved for the abeyance with status reports due every 90 days. Counsel to EPA write in the motion that it has conferred with petitioners’ counsel and intervenors’ counsel and report the following: petitioners (a coalition of attorneys general from 16 states and the City of New York, led by the New York State AG’s office) “take no position at this time on the relief requested by EPA and intend to file a response in support or opposition by Friday, November 5, 2021”; environmental petitioners “intend to file a response to EPA’s motion by Friday, November 5, 2021, after they have had an opportunity to gain further clarity on EPA’s timeline for reconsidering the ozone NAAQS”; petitioner Center for Biological Diversity “states that it opposes an abeyance as to the issues raised in its petition, and takes no position on an abeyance as to the other petitions in these consolidated cases”; industry intervenors “state that they take no position on the relief requested in this motion”; and “a coalition of intervenors, representing six states oppose the relief requested in this motion.” With respect to the coalition of attorney general intervenors from six states, this group submitted to the court, on November 2, 2021, its opposition to EPA’s motion to hold in abeyance, stating, “After delaying this proceeding for over 180 days based on several previous motions, EPA’s most recent motion asks this Court to further delay resolution of this case by an additional two years. EPA’s motion for abeyance fails to provide adequate justification for any further delay. Moreover, the requested two-year delay would cause serious injuries to the State Intervenors in connection with their continuing sovereign obligations to comply with the current Ozone NAAQS during the next two years of indecision by EPA.” Accordingly, they ask the court to deny EPA’s motion to hold in abeyance and grant their October 29, 2021, motion to govern further proceedings, in which they request that the court “place this case back on track for briefing on the merits without further delay” and issue a briefing and scheduling order to move the case forward. For further information:

https://www.4cleanair.org/wp-content/uploads/Litigation-Review_of_2020_Ozone_NAAQS_Decision-Respondent_Motion_to_Hold_in_Abeyance-102921.pdf,

<https://www.4cleanair.org/wp-content/uploads/New-York-v.-EPA-States-Opp.-to-EPA-Abeyance-Motion-11-2-21.pdf> and <https://www.4cleanair.org/wp-content/uploads/New-York-v.-EPA-States-MTG-10-29-21.pdf>

(4) Researchers Find Consumption by World’s Richest Countries

Responsible for Half of All Global Premature Deaths from Exposure to PM_{2.5} (November 2, 2021)

– In a study published in *Nature Communications* a team of researchers from Japan and Australia quantifies the global footprint of PM_{2.5}-related premature deaths for the G20 nations – 19 of the world’s largest economies – concluding that of the 4.2 million annual premature deaths worldwide attributable to exposure to PM_{2.5} about half are related to the goods sent to and consumed by these nations and their residents. In “Consumption in the G20 nations causes particulate air pollution resulting in two million premature deaths annually,” the authors find that the lifetime consumption of every 28 people living in a G20 country results in one premature death, largely infants and people of an average age of 67 and mostly in developing countries. The researchers further conclude in their study that “without internationally coordinated efforts this polarized situation will continue” and that “G20 nations should take responsibility for their footprint rather than focusing solely on transboundary air pollution, as this would expand opportunities for reducing PM_{2.5}-driven premature mortality. Given the infant mortality footprint identified, it would moreover contribute to ensuring infant lives are not unfairly left behind in countries like South Africa, which have a weak relationship with G20 nations.” For further information:

<https://www.nature.com/articles/s41467-021-26348-y>

(5) Vice President Harris Joins Energy Secretary Granholm to Announce \$199 Million in Funding to Pioneer Electrified Trucks and Improve EV Charging Infrastructure (November 1, 2021)

– Vice President Kamala Harris and Energy Secretary Jennifer Granholm announced that the U.S. Department of Energy (DOE) has awarded \$199 million to fund 25 projects intended to put cleaner cars and trucks on the road and improve U.S. electric vehicle (EV) charging infrastructure. Under the “SuperTruck 3” initiative of DOE’s Office of Energy Efficiency and Renewable Energy five manufacturers of heavy-duty vehicles will split \$127 million “to pioneer electrified medium- and heavy-duty trucks and freight system concepts to achieve higher efficiency and zero emissions.” These projects – to be undertaken by PACCAR, Volvo Group North America, Daimler Trucks North America, Ford Motor Company and General Motors – will, subject to appropriations, be funded over five years with the manufacturers providing dollar-for-dollar matching funds. An additional \$71 million will be invested in 20 research, development and demonstration projects conducted by industry, academia and non-profits to lead the expansion of EV charging stations to enable the transition from fossil fuel-powered vehicles to EVs. For further information:

<https://www.energy.gov/articles/doe-announces-nearly-200-million-reduce-emissions-cars-and-trucks>

and [https://www.energy.gov/sites/default/files/2021-](https://www.energy.gov/sites/default/files/2021-10/FY21_VTO_2475_Low_GHG_selections_table-for_release.pdf)

[10/FY21 VTO 2475 Low GHG selections table-for release.pdf](https://www.energy.gov/sites/default/files/2021-10/FY21_VTO_2475_Low_GHG_selections_table-for_release.pdf)

(6) House Oversight Committee Democrats Subpoena Big Oil Climate Documents (November 2, 2021)

– The U.S. House of Representatives Oversight and Reform Committee has issued subpoenas to four major oil companies and

two trade associations seeking internal communications among senior executives and board members relating to climate science, their “role in contributing to climate change” and the impacts it could have on their businesses. It also calls for documents on funding to third-party entities, as well as their respective plans to reduce greenhouse gas emissions. The subpoenas follow an October 28, 2021, hearing at which executives from Shell, BP, Exxon and Chevron, the American Petroleum Institute and the U.S. Chamber of Commerce testified and provided thousands of pages of publicly available documents, press releases, and social media posts (see related story in the October 23-29, 2021 *Washington Update*), which Committee Chair Carolyn Maloney (D-NY) described as “non-responsive”. The subpoenas demand the entities produce all materials, including internal documents and correspondence. For further information:

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-11-2%20Fossil%20Fuel%20Subpoena%20Memo%20%28Final%29.pdf>

(7) Republican Senators Seek Information on Development of the Social Cost of Greenhouse Gases (November 4, 2021) - A group of nine U.S. Senate Republicans have written to the White House seeking the recommendations of the Interagency Working Group on the Social Cost of Greenhouse Gases (SC-GHG). In February 2021, the Biden administration re-established a circa-2016 social cost of carbon at \$51 per ton, and this Working Group was established by the January 20, 2021, EO 13990 with a deadline for recommendations updating the social cost calculations by September 1, 2021. The Senators write in their letter that the date has passed and “no insights have been offered to Congress or the American public on when and what to expect in these recommendations”. The lawmakers write that these recommendations would be factors in “areas of decision-making, budgeting, and procurement by the Federal Government” where the social cost of greenhouse gases may be used. “Given the potential wide-reaching application of the SC-GHG in decision-making, budgeting, and procurement, it is critically important for the Working Group to be transparent and accountable in its actions,” they wrote. For further information: <https://www.4cleanair.org/wp-content/uploads/935B6913537F90071F97505BC956230F.2021-11-02-letter-to-iwg-on-sc-ghg-request-for-federal-decisionmaking-recommendations-signed-.pdf>

(8) Petitioner Challenging Revised CSAPR Update Files Opening Brief (November 3, 2021) – The Midwest Ozone Group, the sole petitioner in litigation challenging EPA’s April 30, 2021, revised Cross-State Air Pollution Rule (CSAPR) Update, filed its opening brief in the U.S. Court of Appeals for the District of Columbia Circuit. In making its case for the rule to be remanded, the petitioner argues that 1) EPA acted unlawfully and arbitrarily after the D.C. Circuit’s remand of the CSAPR Update by taking a number of “shortcuts” in order to meet a March 15, 2021, deadline imposed by a New York district court; 2) EPA’s approach to identifying downwind receptors (Step 1) was arbitrary and inconsistent with the remand in the case of *Wisconsin v. EPA*; 3) EPA arbitrarily relied on inappropriate monitoring data when making its determination of upwind state significant contribution to downwind state nonattainment or maintenance (Step 2); and 4) EPA’s action imposing additional control requirements on electric generating units

(Step 3) was inconsistent with the *Wisconsin* remand and based on erroneous data. For further information: <https://www.4cleanair.org/wp-content/uploads/Midwest-Ozone-Group-v.-EPA-Petitioners-Brief-11-3-21.pdf>

(9) Ethanol Trade Association Notifies EPA of Intent to Sue over Delay in Biofuel Standards (November 2, 2021) – Growth Energy, an ethanol industry trade group, sent EPA a notice of intent (NOI) to sue the agency for its failure to fulfill its nondiscretionary obligations under Section 211(o) of the Clean Air Act (CAA) to issue renewable fuel obligations for 2022 and establish applicable volumes for 2023 for the Renewable Fuel Standard (RFS) program. Under the CAA, EPA is required, by November 10 of each year, to calculate and promulgate renewable fuel obligations to ensure that the RFS program requirements for the coming year are achieved. In its NOI, Growth Energy observes that the statutory deadline for EPA to issue the 2022 renewable fuel obligations is November 30, 2021 and that “[a]s of today – 28 days before the statutory deadline – EPA has not even issued a notice of proposed rulemaking to establish those obligations.” Given the procedural steps necessary to conduct a rulemaking “it is impossible for EPA to issue the 2022 renewable fuel [obligations] by the statutory deadline,” Growth Energy posits. In addition, although Congress identified statutory volume requirements through 2022, the CAA requires EPA to set the volume requirements for 2023 and beyond “no later than 14 months before the first year for which such applicable volumes will apply,” which, Growth Energy points out, was November 1, 2021. No notice of proposed rulemaking has been issued for this action either. “EPA’s failure to timely perform these mandatory, non-discretionary duties not only violates the Clean Air Act, but also undermines Congress’s intention that the RFS program ‘force the market to create ways to produce and use greater and greater volumes of renewable fuel each year’ and deprives market participants of the ‘market certainty’ that is ‘so critical to the long term success of the Renewable Fuel Program,’” writes Growth Energy before advising EPA that should it fail to issue these fuel obligations and volumes within 60 days of the November 2, 2021, NOI the group reserves its right to sue for relief. For further information: <https://growthenergy.org/wp-content/uploads/2021/11/Growth-Energy-notice-of-intent-to-sue-re-2022-RVOs-and-Set.pdf?source=email>

(10) Supreme Court Agrees to Review EPA’s Greenhouse Gas Regulatory Authority Under CAA Section 111(d) (October 29, 2021) – The U.S. Supreme Court has agreed to review the January 2021 decision of the U.S. Court of Appeals for the District of Columbia Circuit that struck down the EPA’s 2019 Affordable Clean Energy (ACE) Rule, the rule that rescinded and replaced the Obama Administration’s Clean Power Plan (CPP) regulating greenhouse gas (GHG) emissions from existing power plants. The Court granted four petitions for a writ of certiorari filed by: 1) a coalition of nineteen states led by West Virginia; 2) North Dakota; 3) Westmoreland Mining Holdings LLC; and 4) the North American Coal Corporation. The questions presented in the two state petitions and that of North American Coal Corp. are variations of the following: whether, contrary to the D.C. Circuit’s ruling, EPA is limited under Section 111(d) of the Clean Air Act to establishing a “best system of emissions reduction” that is applicable to and

achievable by individual sources, rather than implementing a broader, industry-wide emissions-reduction approach (such as generation shifting or a cap-and-trade system). The Court also agreed to review one of two issues presented in the Westmoreland petition: whether EPA is barred from regulating GHG emissions from existing coal-fired power plants under Section 111(d) because the agency already regulates emissions of certain hazardous air pollutants (HAPs) from such plants under Section 112. The state petitioners led by West Virginia argued that it is critically important for the Supreme Court to step in now to clarify the threshold issue of the extent of EPA's Section 111(d) authority, because many years and resources will otherwise be put to waste while EPA crafts a new rule based on what the petitioners believe to be a faulty interpretation of the Clean Air Act. EPA argued in its opposition to the petitions that for the Court to weigh in now would amount to an impermissible advisory opinion, as EPA is currently working to develop a replacement for the ACE rule. The four cases are consolidated before the Supreme Court under *West Virginia v. EPA*, No. 20-1530. For further information: For further information:

https://www.supremecourt.gov/orders/courtorders/102921zr1_dafi.pdf (Supreme Court order of October 29, 2021 granting petitions for writs of certiorari); http://www.4cleanair.org/sites/default/files/Documents/ACE_Rule_States_Cert_Petition_4-29-21.pdf (*West Virginia v. EPA* cert petition, No. 20-1530 (April 29, 2021)); http://www.4cleanair.org/sites/default/files/Documents/N_Am_Coal_Corp_ACE_Rule_Cert_Petition_4-30-21.pdf (North American Coal Corp. v. EPA cert petition, No. 20-1778 (April 30, 2021)); <https://www.4cleanair.org/wp-content/uploads/ACE-Rule-Westmoreland-Cert-Petition-6-18-21.pdf> (Westmoreland Mining Holdings, LLC v. EPA cert petition, No. 20-1778 (Jun 18, 2021)); and <http://www.4cleanair.org/sites/default/files/resources/ND%20Writ%20of%20Cert%20SCOTUS.pdf> (*North Dakota v. EPA* cert petition, No. 20-1720 (June 24, 2021))

The Week Ahead

- Congress in Recess – November 9-12, 2021
 - [COP26: Uniting the World to Tackle Climate Change](#) – Through November 12, 2021
 - [U.S. EPA National Environmental Justice Advisory Council \(NEJAC\) Virtual Meeting](#) – November 10, 2021
 - Veteran's Day – November 11, 2021
 - [Environmental Protection Agency holds a final deliberation videoconference of the Board of Scientific Counselors Air Climate and Energy Subcommittee](#) – November 12, 2021
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