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This Week in Review

(1) Presidential Order Directs Federal Government to Be Carbon Neutral by 2050 (December 8, 2021) – In an Executive Order, President Joseph R. Biden Jr. has directed the federal government to focus its \$650 billion in annual spending to prioritize clean energy, electric vehicles, and energy-efficient buildings. The order aims to reduce CO₂ emissions from federal facilities and operations by 65 percent by 2030 and net-zero emissions from all federal procurement by 2050. The Executive Order also calls for at least 10 gigawatts of new clean electricity production by the end of the decade, half of which is intended to come from distributed energy resources close to load. It directs the General Services Administration (GSA), which procures the federal government's 600,000 vehicles, to make 100 percent zero-emission vehicle (ZEV) acquisitions by 2035, including 100 percent zero-emission light-duty vehicle acquisitions by 2027. It calls for a net-zero emissions portfolio among the federal government's 300,000 buildings by 2045, including a 50 percent emissions reduction by 2032; and “Net-zero emissions from overall federal operations by 2050, including a 65 percent emissions reduction by 2030.” Finally, it articulates actions for federal agencies to foster “a climate- and sustainability-focused Federal workforce”, including through training and performance goals. For further information:

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/08/executive-order-on-catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability/>

(2) NACAA Meets with OMB to Urge Adoption of Robust Final LDV GHG Emission Standards Rule by the End of 2021 (December 6, 2021) – Representatives of NACAA met with officials from the Office of Management and

Budget and EPA (under Executive Order 12866) to provide the association's perspectives (as outlined in previous comments) on a final rule revising the model year (MY) 2023 through 2026 light-duty vehicle (LDV) greenhouse gas (GHG) emission standards rolled back under the previous administration (EPA's final rule is currently undergoing interagency review). During the meeting, NACAA Mobile Sources and Fuels Committee Co-Chairs Erik White (Placer Co., CA) and Tracy Babbidge (CT) and NACAA Executive Director and Deputy Director, Miles Keogh and Nancy Kruger, respectively, conveyed to Administration officials the air quality, public health and climate change mitigation benefits of more robust federal LDV GHG emission standards and reiterated the association's recommendations that the final rule should, at a minimum, achieve the same level of emission benefits as under the original standards set by EPA in 2012 (and subsequently rolled back in 2020). NACAA representatives highlighted that since the 2012 standards were adopted, clean vehicle technology and performance have progressed far more than anticipated and at lower cost. Further, although EPA touted this progress in the proposed rule, the agency did not reflect it in the proposed rule, nor did the agency reflect the many recent announcements by automakers signaling a quickly increasing shift in investments away from internal-combustion engine technologies and toward high levels of electrification. The NACAA delegation also urged that in the final rule EPA adopt the Alternative 2 emissions standards included in proposed rule (which would result in more protective emission standards than those proposed by EPA) augmented by a MY 2026 standard that is 10 grams per mile more stringent than that proposed (an option on which EPA requested comment). This combination, they told OMB and EPA, comes the closest to NACAA's recommendation of, at a minimum, the same level of emission benefits as under the final standards adopted in the 2012 rule and puts the nation on a clear trajectory to 50 percent of all new passenger cars and light trucks sold in 2030, and 100 percent of those sold in 2035, being zero-emission vehicles. For further information: https://www.4cleanair.org/wp-content/uploads/NACAA-Comments_on_EPA_LDV_GHG_Stds_NPRM-092721lh.pdf

(3) EPA Proposes Actions Related to RFS Program; Court Grants Agency's Motion for Remand Without Vacatur of 36 Decisions on Small Refinery

Waivers (December 7 & 8, 2021) – EPA announced a set of actions related to the Renewable Fuel Standard (RFS) program: 1) proposed biofuel volume obligations for 2020, 2021 and 2022, 2) proposed regulatory changes "intended to enhance the program's objectives" and 3) a call for public comment on a proposed decision to deny 65 pending small refinery exemption (SRE) petitions in response to the Tenth Circuit's 2020 decision in *Renewable Fuels Association v. EPA*, in which the court reduced the scope of EPA's authority to grant SREs. Regarding the Tenth Circuit case, this week, the court granted EPA's request for voluntary remand without vacatur of 36 SRE waiver decisions made under the previous administration, opening the door for EPA to revise those decisions, under which 31 waivers were granted. EPA will accept public comments on the proposed biofuel volume obligations through February 4, 2022. The agency announced in the *Federal Register* (December 10, 2021, 86 Fed. Reg. 70,426) that it will hold a virtual public hearing on the proposed volume obligations on January 4, 2022, and

convene an additional session on January 5, 2022, if necessary. Following publication in the *Federal Register* of the notice of opportunity to comment on the proposed denial of the pending SRE petitions EPA will accept public comments for 30 days. For further information: <https://www.epa.gov/renewable-fuel-standard-program/proposed-volume-standards-2020-2021-and-2022>, <https://www.epa.gov/renewable-fuel-standard-program/proposal-deny-petitions-small-refinery-exemptions>, https://www.4cleanair.org/wp-content/uploads/Litigation-RFS_Waivers-Court_Remand-120921.pdf and <https://www.govinfo.gov/content/pkg/FR-2021-12-10/pdf/2021-26821.pdf>

(4) Electric Companies Announce National Electric Highway Coalition (December 7, 2021) – The Edison Electric Institute (EEI) announced the establishment of the National Electric Highway Coalition, an initiative under which the Electric Highway Coalition and the Midwest Electric Vehicle Charging Infrastructure Collaborative are merged and additional electric companies from across the nation are included. EEI President Tom Kuhn said of this initiative, “EEI and our member companies are leading the clean energy transformation, and electric transportation is key to reducing carbon emissions across our economy. With the formation of the National Electric Highway Coalition, we are committed to investing in and providing the charging infrastructure necessary to facilitate electric vehicle growth and to helping alleviate any remaining customer range anxiety.” According to EEI, its member companies have already made investments of more than \$3 billion to fund customer programs, EV charging infrastructure deployment projects and accelerated electric transportation projects. EEI anticipates that the 22 million EVs expected to be on U.S. roads in 2030 will require more than 100,000 EV fast-charging ports to support them. For further information: <https://www.eei.org/issuesandpolicy/Pages/NEHC.aspx>

(5) EPA Proposes Consent Decree Setting Deadlines for Revisions to NSPS and NESHAP for Certain Chemical Manufacturing Categories (December 7, 2021) – EPA has proposed a consent decree that would set a schedule for reviewing and revising, if needed, the New Source Performance Standards (NSPS) for four categories of synthetic organic chemical manufacturing industry (SOCMI) sources and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for SOCMI source categories regulated under the Hazardous Organic NESHAP Rule (HON). The proposed consent decree was published in the *Federal Register* and opened a public comment period until January 6, 2022 (82 Fed. Reg. 69240). The consent decree would require EPA to propose revisions to the NSPS and NESHAP by December 16, 2022 and issue final rules by March 29, 2024. Revisions to the rules would be pursuant to EPA’s obligation to review and revise NSPSs and NESHAPs at least every eight years. The consent decree was reached in response to a suit filed on December 18, 2020 in the United States District Court for the District of Columbia by several environmental groups (*Texas Environmental Justice Advocacy Services, et. Al. V. Regan*, No. 1:20-cv-03733-RJL) for EPA’s failure to conduct reviews of the rules by the statutory deadlines in the Clean Air Act. For further information: <https://www.govinfo.gov/content/pkg/FR-2021-12-07/pdf/2021-26434.pdf>

(6) States Urge 8th Circuit to Block Biden Administration's Interim Social Cost of GHGs (December 3, 2021) – A coalition of 13 states led by Missouri asked the U.S. Court of Appeals for the 8th Circuit to overturn a district court decision that dismissed their lawsuit to block use of the Biden Administration's interim "social cost of GHGs" (SC-GHG) metric. The SC-GHG is an analytical tool used in regulatory decision-making to estimate the monetized damages associated with incremental increases in greenhouse gas emissions. In February 2021, an interagency working group formed pursuant to President Biden's Executive Order 13990 endorsed an interim SC-GHG that currently equates to \$51 per metric ton for carbon dioxide (under the Trump Administration, it had fallen to \$1 per ton) based on a 3% discount rate; the group also invited agencies to use smaller discount rates that would increase that cost. The U.S. District Court for the Eastern District of Missouri dismissed the states' lawsuit in August on grounds that they lacked standing to sue and their claims were not ripe for adjudication. In their brief filed in the 8th Circuit, the states argue that the district court erred in holding that they will not have standing until the interim SC-GHG values are used in a rulemaking or other federal agency action. On the contrary, they argue, "the President's Executive Order purports to give a binding command to state agencies engaged in the administration of cooperative-federalism programs, and thus it inflicts a direct and already-complete injury to States' freedom." They also claim that they have already suffered the procedural injury of being denied the opportunity to participate in notice-and-comment rulemaking on the interim SC-GHG values, and that their injuries are not speculative because the values are already being used by several agencies in the formulation of rules. In addition, the states argue that their lawsuit is ripe because the interim SC-GHG values are arbitrary and capricious under the Administrative Procedure Act. They ask the Eighth Circuit to reverse the district court's decision and remand with instructions to enter a preliminary injunction preventing federal agencies from using the interim SC-GHG as binding authority in regulatory actions. The plaintiff/appellant states in this action are Missouri, Alaska, Arizona, Arkansas, Indiana, Kansas, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee and Utah. For further information: <https://www.4cleanair.org/wp-content/uploads/Missouri-v.-Biden-8th-Cir.-Appellants-Brief-12-3-21.pdf>

(7) Department of Energy Proposes More Stringent Energy Efficiency Standard for Light Bulbs (December 3, 2021) – The U.S. Department of Energy (DOE) issued a proposed rule that would create a minimum efficacy standard of 45 lumens per watt (lm/W) for general service lamps (GSLs). GSLs include the most common types of light bulbs and comprise the majority of installed lighting in the residential sector. The proposal would codify the "backstop" standard prescribed by Congress in the Energy Policy and Conservation Act (EPCA), as amended. Specifically, EPCA provides that if DOE fails to complete certain rulemaking proceedings or promulgate a final rule for GSLs that does not produce savings that are greater than or equal to a 45 lm/W standard, it must prohibit the sale of any GSL that does not meet the 45 lm/W minimum efficacy standard. DOE is now proposing that this backstop requirement applies because it failed to

complete a rulemaking in accordance with the statutory criteria. The proposal would reverse a determination made in February 2019 by the previous administration that the backstop requirement was not triggered. The proposed rule will be open for public comment for 45 days after publication in the *Federal Register*. For further information: <https://www.energy.gov/sites/default/files/2021-12/gsl-backstop-nopr.pdf>

(8) Regional Administrators Nominated for Regions Six, Seven, and Nine

(December 9, 2021) - The White House has nominated three new EPA Regional Administrators. Martha Guzman, a commissioner at the California Public Utilities Commission since 2016, is nominated for Region 9 Administrator, an office serving Arizona, California, Hawaii, Nevada, Guam, and the Pacific. She was previously an advisor to Governor Jerry Brown, and practiced law for California Rural Justice League and the United Farm Workers. Earthea Nance is nominated to be Regional Administrator of Region 6, which includes Texas, Louisiana, Oklahoma, New Mexico, and Arkansas. Nance is an associate professor of urban planning and environmental policy at Texas Southern University in Houston. A trained civil engineer, she was director of disaster mitigation and planning for the city of New Orleans after Hurricane Katrina and earned a doctorate in environmental engineering from Stanford University and master's and bachelor's degrees from the University of California-Davis. Meg McCollister, an independent consultant who has focused on non-profit organizations and political campaigns, will be nominated as Regional Administrator of Region 7, which serves Iowa, Kansas, Missouri, and Nebraska. She received her bachelor's degree from the University of Kansas before attending the University of Missouri-Kansas City School of Law, where she earned her Juris Doctorate with an emphasis in Urban, Land Use and Environmental Law. For further information:

<https://www.epa.gov/newsreleases/epa-announces-appointments-regional-administrators-regions-6-7-and-9>

The Week Ahead

- [U.S. Department of Energy Virtual Meeting of the Environmental Management Advisory Board](#) – December 13, 2021
- [U.S. EPA Clean Air Act Advisory Committee Virtual Public Meeting](#) – December 15, 2021
- [U.S. EPA Listening Session on Clean School Bus Program in Bipartisan Infrastructure Law](#) – December 15, 2021
- [U.S. Environmental Protection Agency Teleconference of the Science Advisory Board Per- and Polyfluoroalkyl Substances Review Panel](#) – December 16, 2021

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