

In this week's Washington Update:

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We also provide links to information on events taking place during the week ahead.

This Week in Review

(1) White House Proposes Changes to NEPA (January 9-10, 2020) – Flanked by EPA Administrator Andrew Wheeler and other cabinet members at the White House on Thursday, President Donald Trump delivered an address announcing the release of his Administration's proposed changes to the regulations for implementing the National Environmental Policy Act (NEPA). The proposal – signed by White House Council on Environmental Quality (CEQ) Director Mary Neumayr and published in the *Federal Register* on Friday (85 Fed. Reg. 1,684) – emphasizes that the goal of the revisions is to speed the review and approval of infrastructure projects, and notes the proposed changes are the most far reaching in 40 years. The proposed changes build on a June 2018 guidance document issued by CEQ that restricted federal review of greenhouse gas emissions in NEPA project permitting and reflect an attempt to address over 12,500 comments received in response to a June 2018 Advance Notice of Proposed Rulemaking, titled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act." This week's proposal asserts that the average time for completion of a NEPA-required environmental impact statement (EIS) and issuance of a record of decision (ROD) is over 4.5 years and the median is 3.6 years. As such, many aspects of the proposed regulations emphasize expedited review. For example, the proposal includes provisions that consolidate the preparation of multiagency reviews into a single EIS and joint ROD to the extent practicable, and sets a two-year goal for the completion of analyses. It also requires lead agencies to develop a joint schedule and articulate procedures to elevate delays or disputes. The proposed regulations add sections that raise the

threshold for environmental evaluation and discourage duplication of federal review with state, tribal and local environmental reviews. The proposal alters the reviews required under NEPA, asserting that “effects must be reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.” In addition, “CEQ proposes a change in position to state that analysis of cumulative effects, as defined in CEQ’s current regulations, is not required under NEPA.” The regulations would limit EIS considerations of impacts “if they are remote in time, geographically remote, or the result of a lengthy causal chain.” The document also specifies new limits to input received from the public. It establishes page limits and other restrictions to encourage concise filings, requires timely submission of public comments and encourages comments to be “as specific as possible.” The Council on Environmental Quality will take written comment on the proposal through March 10, 2020 and will hold two public hearings, first on February 11, 2020 in Denver CO and then on February 25, 2020 in Washington DC. For further information: <https://www.govinfo.gov/content/pkg/FR-2020-01-10/pdf/2019-28106.pdf>

(2) EPA Announces Advance Notice of Proposed Rulemaking for Cleaner Trucks Initiative, Launches CTI Website (January 6, 2020) – EPA Administrator Andrew Wheeler announced the release of an Advance Notice of Proposed Rulemaking (ANPRM) on the agency’s Cleaner Trucks Initiative (CTI), to establish new emission standards for NO_x and other pollutants for heavy-duty trucks. With this ANPRM, EPA is seeking comment not only on emission standards but also on the need for additional NO_x control as well as potential emission control technologies, program elements, standards and test cycles, in-use emission standards, extended regulatory useful life, lengthened emissions warranties, certification and compliance streamlining and incentives for early emission reductions. Administrator Wheeler announced the CTI in November 2018. Prior to that, in June 2016, 20 organizations, including many state and local air pollution control agencies from across the country, petitioned EPA to develop more stringent highway heavy-duty NO_x standards to address the critical need for reductions in NO_x emissions that adversely impact health and welfare and affect the ability of many areas to attain and maintain the National Ambient Air Quality Standards. In June 2018, NACAA sent a letter to the EPA Administrator urging prompt action to revise the NO_x emission standards for heavy-duty trucks and engines to achieve a substantial reduction in emissions. Once the ANPRM is published in the *Federal Register* (expected imminently) a 30-day public comment period will follow. Also this week, EPA launched a new website dedicated to the CTI. The site compiles background documents, publications, presentations, project reports and other materials related to further regulation of heavy-duty trucks. For further information: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/advance-notice-proposed-rule-control-air-pollution-new> and <https://www.epa.gov/regulations-emissions-vehicles-and-engines/cleaner-trucks-initiative>

(3) EPA Releases Draft Guidance on CAA Section 179B International Transport Demonstrations (January 9, 2020) – EPA released a draft guidance

document to assist state, local and tribal air agencies in the preparation of technical demonstrations under Clean Air Act Section 179B to show that an area would be able to attain, or would have attained, a National Ambient Air Quality Standard but for emissions emanating from outside the U.S. The document, titled “Draft Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions,” describes and provides examples of the kinds of information and analyses that EPA recommends air agencies include in a Section 179B demonstration. Section 179B gives EPA the authority to assess an international transport demonstration when evaluating the adequacy of a State Implementation Plan submitted in response to a nonattainment designation or reclassification of an area, or when EPA determines whether a nonattainment area has failed to attain the standard by the relevant attainment date. If the demonstration is satisfactory to the EPA Administrator, EPA will provide regulatory relief as specified in Section 179B. The draft guidance is open for informal public comment through March 10, 2020. For further information: <https://www.epa.gov/ground-level-ozone-pollution/international-transport-air-pollution>

(4) Rule Extending PAMS Start Date Published in *Federal Register* (January 8, 2020) – EPA published in the *Federal Register* (85 Fed. Reg. 834) a final rule extending the start date for implementation of the redesigned Photochemical Assessment Monitoring Stations (PAMS) network from June 1, 2019 to June 1, 2021. The agency proposed this extension on May 31, 2019 because many states had not yet received the equipment and training needed to implement the new requirements. The two-year extension applies for all agencies across the country (rather than some subset of agencies identified in various proposed alternative options EPA presented in its proposal). In July 1, 2019 comments on EPA’s proposal NACAA supported the two-year blanket extension, noting that agencies may choose to start PAMS measurements earlier if they so choose. For further information: <https://www.govinfo.gov/content/pkg/FR-2020-01-08/pdf/2019-28219.pdf> and <https://www.epa.gov/amtic/final-extension-start-date-revised-photochemical-assessment-monitoring-stations>

(5) House Committee on Energy and Commerce Releases Framework of Draft Climate Legislation (January 8, 2020) – The House Committee on Energy and Commerce released a draft framework for potential future legislation to address the climate crisis. The draft framework, titled the “Climate Leadership and Environmental Action for our Nation’s (CLEAN) Future Act,” was announced by Energy and Commerce Committee Chairman Frank Pallone, Jr. (D-NJ), Environment and Climate Change Subcommittee Chairman Paul Tonko (D-NY) and Energy Subcommittee Chairman Bobby L. Rush (D-IL). The CLEAN Future Act includes eight titles. Title I establishes a national, economy-wide target for net-zero greenhouse gas (GHG) emissions by 2050. Title II articulates power sector actions, including a clean energy standard that partially credits reductions from low-emitting fossil resources. Title III gathers energy efficiency and building efficiency measures from other legislation introduced in the past year and Title IV focuses on transportation issues, including standards and programs for light- and

heavy-duty on-road vehicles, as well as non-road, marine and air transport. Like the building efficiency section, Title V gathers together legislative proposals in other bills into a section that aims to comprehensively improve emissions from industrial activity, including proposing regulations around the procurement and financing of industrial products and projects. Title VI addresses environmental justice concerns and Title VII focuses on the reduction of “super pollutants,” particularly methane and black carbon. It restricts many flaring activities from production sites before 2030. In addition to workforce, resilience and “green banking” provisions, Title VIII empowers states to develop plans to meet (or exceed) the national standards established in Title I, using a process similar to a State Implementation Plan. The framework articulates that both individual state and multistate approaches are viable for compliance. Notably, none of the titles proposes the establishment of a pricing mechanism for GHGs. The House Committee on Energy and Commerce has issued this framework for discussion in the 116th Congress rather than as a specific legislative proposal, with an assumed intent that it will serve as a launching point for legislation in the 117th Congress. The Committee seeks detailed comments and feedback on the working draft, with the intent of releasing full legislative text by the end of January 2020. For further information:

<https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/CLEAN%20Future%20Act%20Memo%2001.08.20.pdf>

(6) Analysis Finds Record Drop in Coal Use Drove Modest Greenhouse Gas Emissions Reductions in 2019 (January 7, 2020) – A preliminary analysis of 2019 U.S. greenhouse gas (GHG) emissions by the Rhodium Group indicate an economy-wide GHG emissions drop of 2.1 percent last year. The analysis gives most of the credit for the reduction to the largest-ever yearly drop in power generated from coal, which plummeted 18 percent between 2018 and 2019, its lowest level since 1975. This was offset by increased emissions from the industrial sector, buildings and the oil and gas sector (methane emissions). Despite an increase in vehicle miles traveled, the report asserts that transportation sector emissions dipped slightly as light-duty vehicle standards adopted in 2015 began affecting the makeup of the U.S. vehicle fleet. For further information: <https://rhg.com/research/preliminary-us-emissions-2019/>

(7) Federal Appeals Court Vacates Air Permit for Atlantic Coast Pipeline Compressor Station (January 7, 2020) – The U.S. Court of Appeals for the Fourth Circuit vacated and remanded to the Virginia Air Pollution Control Board an air permit for the construction of a compressor station along the planned 600-mile Atlantic Coast Pipeline, which is being developed to transport natural gas from West Virginia to North Carolina. The court ruled that the Board violated Virginia law by failing to assess the station’s potential for disproportionate health impacts on the surrounding community, which is predominately African-American. The Board cannot “blindly rely” on projected compliance with state and national ambient air quality standards to satisfy its obligation to analyze the station’s environmental justice impacts, the court explained. “[E]nvironmental justice is not merely a box to be checked, and the Board’s failure to consider the

disproportionate impact on those closest to the Compressor Station resulted in a flawed analysis.” The court also ruled that DEQ should have considered whether the station should be required to utilize electric motors in lieu of gas-fired turbines, finding that the “redefining the source” doctrine does not exist in Virginia law. For further information: http://www.4cleanair.org/sites/default/files/Documents/Friends_of_Buckingham_v_APCB_4th_Cir_Opinion_1-7-19.pdf

(8) Wheeler Selects Kurt Thiede as EPA Region 5 Regional Administrator (January 8, 2020) – EPA Administrator Andrew Wheeler announced his selection of Kurt Thiede as the new Regional Administrator for Region 5, which includes Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio. Thiede will replace Cathy Stepp, who served in the position for two years and has resigned effective January 17, 2020. Previously, Thiede worked for the Wisconsin Department of Natural Resources for 18 years in various positions, including as Deputy Secretary and as Administrator of the Land Division. Most recently, he was the chief of staff to Cathy Stepp in the Region 5 office. For further information: <https://www.epa.gov/newsreleases/epa-appoints-kurt-thiede-region-5-administrator>

The Week Ahead

- [EPA Public Hearing on Proposed Amendments to the Miscellaneous Organic Chemical Manufacturing National Emission Standards for Hazardous Air Pollutants](#), in Houston, TX – January 14, 2020
- [House Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation Hearing on the Path to a Carbon-Free Maritime Industry: Investments and Innovation](#), in Washington, DC – January 14, 2020
- [House Science, Space and Technology Committee Hearing on the Climate Crisis: From Science to Solutions](#), in Washington, DC – January 15, 2020
- [House Science, Space and Technology Subcommittee on Energy Hearing on the Department of Energy's Office of Science: Exploring the New Frontiers in Energy Research and Scientific Discovery](#), in Washington – January 15, 2020
- [EPA Public Hearing on Proposed Amendments to the Miscellaneous Organic Chemical Manufacturing National Emission Standards for Hazardous Air Pollutants](#), in Washington, DC – January 16, 2020

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