

ENVIRONMENTAL NOTES

January 2019

EPA TO REORGANIZE ALL 10 REGIONAL OFFICES

BY: CHANNING J. MARTIN

EPA recently released a final regional office realignment plan in response to President Trump's March 2017 Executive Order 13781. That order required EPA and other federal agencies to improve efficiency, effectiveness, and accountability by determining whether functions and programs within the agency could be eliminated, consolidated or merged. The plan comes just one year after the Trump administration explored the possibility of closing and consolidating some of EPA's regional offices.

EPA last reorganized in the mid-1990s under Administrator Carol Browner. At present, every EPA regional office has a different structure. After reviewing information presented by an internal workgroup, the agency concluded that the regional offices needed to have the same organizational structure used by EPA headquarters. By making this change, EPA believes the regional offices will be better able to streamline decision-making. EPA also believes the change will allow it to better allocate resources based on needs among the regions.

Accordingly, EPA has established a standard organizational structure for its regional offices that is intended to:

- Increase coordination between EPA National Programs and their regional counterparts;

- Improve the consistent implementation of EPA regulations and policies;
- Allow for better resource allocation to more effectively carry out the agency's mission;
- Facilitate the agency's overall operational excellence; and
- Provide greater transparency for EPA customers.

The new standard structure for every regional office includes a Regional Administrator, a Deputy Regional Administrator, and the following divisions:

- Air and Radiation;
- Administration and Resource Management (to include Office of Administration and Resources Management, Office of the Chief Financial Officer and Office of Environmental Information functions);
- Enforcement and Compliance Assurance;
- Land and Redevelopment (to include Office of Chemical Safety and Pollution Prevention and Brownfields functions);
- Superfund and Emergency Management;
- Water;
- Laboratory Services and Applied Science; and
- Regional Counsel (to include the Freedom of Information Act program).

EPA says the plan maintains all 10 regional offices and does not move staff geographically, reduce or demote staff, downsize/close/move regional offices or laboratories, or make any changes to specific regional or geographic programs. With that said,

leadership personnel within the regions could be in jeopardy because, as divisions are redefined and programs are consolidated, there could be two or more persons in line for the same job. In addition, considering the Trump administration's emphasis on "running lean" and on providing more power to state environmental agencies, there is concern among regional office personnel about how implementation of the plan will play out.

The reorganization plan is not a done deal; it has to be approved by Congress. The next step is for EPA's Office of Administration and Resources Management to prepare cost information and a realignment package to submit to the Senate and House Committees on Appropriations. Will the plan ever be approved and implemented? Considering that Democrats will control the House as of January 2019, that's not a sure bet. We'll keep you advised of developments.

EPA'S PROPOSED NSR REFORM RULE IS A GOOD START, BUT . . .

BY: JOHN M. "JAY" HOLLOWAY III

In addition to addressing CO₂ emissions from existing coal-fired utility boilers, the proposed Affordable Clean Energy (ACE) rule includes a proposal to reform the New Source Review (NSR) emissions increase test. Whether certain physical changes or changes in the method of operation made to existing boilers trigger permitting as a new source is one of the most controversial aspects of the Clean Air Act (CAA). A key element of the existing NSR test is whether a proposed change will result in a significant change in emissions. Traditionally, this potential emissions increase is evaluated based on annual emissions from a unit. EPA is now proposing to add an evaluation of possible changes in hourly emissions after a project is completed to the annual emissions analysis. If a project will not increase the hourly emissions rate of the unit, NSR is not triggered.



The ACE rule NSR reform proposal captures the clear 40-year old Congressional intent for the NSR emissions increase test. The 1977 CAA Amendments required construction, as defined by the New Source Performance Standards (NSPS) program, to occur before NSR is triggered. Importantly, the proposed NSR reform applies to all traditional CAA pollutants and not just CO₂ emissions.

Under the NSPS program, whether construction will occur on an existing unit is determined by comparing the maximum potential hourly emissions rate before and after the project. ACE does not adopt the NSPS hourly emissions rate test. Instead, the proposed rule sought comment on three alternatives. The first two alternatives incorporate two hourly emissions rate tests that compare the hourly emissions rate achieved by a unit in the five years before the project to hourly emissions rates achieved in the five years after the project. The third alternative compares the achievable hourly emissions rate before and after the project. The third option is the test that is closest to the NSPS test. EPA needs to closely examine these proposed tests and refine them to be consistent with the CAA and needed NSR reform.

The utility industry contends that units evaluating hourly emissions rate increases should have the option to perform both the hourly and annual emissions rate tests and document the results. If, in

the future, there is a deviation from a post-project hourly emissions rate data point, then the annual emissions analysis can demonstrate that there is no resulting NSR violation.

The utility industry supports the NSR reform proposal, but many prefer that NSR reform not be included in the ACE rule. Instead, they believe EPA should open a separate docket for NSR reform. This separate docket would include industry and natural gas units rather than just coal-fired utility units. To date, EPA has not proposed a comparable NSR test for other industries outside of the utility sector.

[Emissions Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emissions Guidelines Implementing Regulations; Revisions to New Source Review Program, 83 Fed. Reg. 44,746 \(August 31, 2018\) \(Docket Id. No. EPA-HQ-OAR-2017-0355\).](#)

FARM ANIMAL WASTE EMISSIONS MAY FINALLY BREEZE PAST EPCRA REPORTING REQUIREMENTS

BY: JESSICA J.O. KING

Update to May 2017 Environmental Notes article “D.C. CIRCUIT STRIKES DOWN CERCLA REPORTING EXEMPTIONS FOR FEEDING OPERATIONS”

EPA has proposed a new regulation (“Proposed Rule”) exempting emissions from farm animal wastes from the emergency notification and reporting requirements in the Emergency Planning and Community Right-to-Know Act (“EPCRA”). The proposed rule is what EPA hopes to be the final move in the chess game caused by multiple court decisions on the issue. So, what do continuous emissions from animal waste have to do with emergency planning? That’s the million-dollar question raised by owners of animal feeding operations.

EPCRA was passed in 1986 in response to an accidental chemical release in Bhopal, India that injured or killed thousands of citizens and responders. The act requires immediate reporting of releases of hazardous substances to local and state officials. This reporting requirement is in addition to the reporting requirements under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) that requires immediate notification to the National Response Center when there is a release of a reportable quantity of a “hazardous substance” (as that term is defined in CERCLA).

The United States Court of Appeals for the District of Columbia Circuit has been wrestling with the relationship of these CERCLA and EPCRA reporting requirements in the context of emissions from farm animal wastes for the last decade. This is because EPCRA and CERCLA reporting, while separate requirements, are sometimes intertwined. Specifically, EPCRA requires reporting under three possible scenarios:

1. Release of an EPCRA “emergency hazardous chemical” (“EHS” as defined in EPCRA) where notification is required under CERCLA;
2. Release of an EHS where notification is not required under CERCLA if the following three requirements are met:
 - The release is not a federally permitted release;



- The release is in excess of the reportable quantity; and
 - The release occurs in a manner that would require notification under Section 103(a) of CERCLA.
3. The substance is not an EHS but the release occurs from a facility that produces, uses, or stores a hazardous chemical and the release requires notification under Section 103(a) of CERCLA.

In 2008, EPA published a final rule completely exempting reporting of hydrogen sulfide and ammonia from farm animal emissions to the air under CERCLA and, as to EPCRA, exempting reporting for smaller farms with fewer animals than a large concentrated animal feeding operation (CAFO) with more than 1000 animal units. Not surprisingly, environmental groups and livestock trade associations appealed the 2008 final rule, and, in April 2017, the D.C. Circuit vacated it, ruling that EPA lacked authority to exempt farms from the CERCLA and EPCRA reporting requirements.

Having lost the court fight, the livestock industry took the battle to Capitol Hill. In March of 2018, the Fair Agricultural Reporting Method Act (“FARM Act”) was passed. The FARM Act exempts the reporting of air emissions from animal waste under CERCLA. In the summer of 2018, EPA issued a direct final rule addressing the D.C. Circuit court decision as well, removing the EPCRA language from the rule and codifying the FARM Act exemption under CERCLA. But EPA wasn’t finished. To its credit, EPA does not want regulated parties and first responders to lose sight of the purpose of EPCRA reporting – to assist localities and communities in safely responding to unexpected releases of hazardous substances. EPA concluded that air emissions from animal waste at farms is not an unexpected release for which an emergency responder needs to receive notice.

EPA is fixing the issue caused by the 2017 D.C. Circuit decision by issuing its Proposed Rule. The Proposed Rule amends EPCRA regulations by adding a reporting exemption for air emissions from animal waste. EPA justifies the exemption

by arguing that emissions from farm animal waste are “continuous emissions,” which are statutorily exempted from EPCRA emergency notification requirements because the releases are not occurring “in a manner that would require notification under Section 103(a) of CERCLA.”

The comment period on the Proposed Rule ends on December 14, 2018. We’ll keep you advised.

[83 Fed. Reg. 56792 \(Nov. 14, 2018\); EPA Docket ID No. EPA-HQ-OLEM-2018-0318; 40 CFR 355.61](#)



EPA TAKES FINAL ACTION ON PROJECT AGGREGATION POLICY UNDER CLEAN AIR ACT

BY: LIZ WILLIAMSON

The New Source Review (NSR) program hinges on whether physical or operational changes are a “modification” at a source. A modification may include a single change or multiple changes to the facility as part of a single project. An emissions analysis for NSR purposes considers emissions impacts from all the changes involved in the project. As a result, how a source delineates a project has a significant impact on NSR permitting.

EPA recently took final action that clarified the agency's position on defining how related physical or operational changes are treated for NSR (the "Final Action"). The Final Action also concluded the reconsideration of a related EPA action from 2009 on NSR aggregation. EPA reviewed public comments on that action and decided to retain the interpretation in that 2009 action without making any changes to the NSR rule itself.

The Final Action affirms EPA's "substantially related" test as a standard for project aggregation for NSR. EPA is quick to note that project aggregation determinations are fact-specific, making it impossible to establish a bright line standard. EPA also remarks that the Final Action does not depart from past guidance but merely supplements prior policies. It says that providing clarity on project aggregation in a single document is valuable because navigating EPA's collection of guidance documents on the topic "has been a challenge for sources and permitting authorities over the years." 83 Fed. Reg. at 57330.

Timing of activities is a consideration in whether projects are "substantially related." As a policy matter, EPA set a presumption that activities that are three or more years apart are not "substantially related." Other relevant factors include: (1) dependency of the activities on each other for viability; (2) joint project planning; and (3) functional interconnectedness of components in the project. EPA emphasized that the term "intrinsic relationship," which has been used in past memoranda, is meant to be a synonym for "substantially related." *Id.* at 57331. EPA explained in the Final Action that EPA interprets the NSR regulations to allow a source to reasonably define "its proposed project broadly." *Id.* at 57331.

As a final note, EPA opened the door for states to formally adopt the policy in the Final Action through a SIP submittal that EPA would approve. EPA noted that states do not need to avail themselves of this route to implement the "substantially related" test. EPA believes that many states already follow a similar interpretation. *Id.* at 57331.

Sources should be mindful of the components of the "substantially related" test, given that defining the project begins with the source. If a source wishes for multiple activities to be considered as a single project, the manner in which the project develops will impact the regulatory agency's interpretation. In other words, (i) development of common engineering and budgeting analyses for multiple project activities, and (ii) a time line for construction and installation within the three-year period during which activities are presumed not to be substantially related will help the source successfully draw the boundaries of the project for NSR purposes.

[Prevention of Significant Deterioration \(PSD\) and Nonattainment New Source Review \(NNSR\): Aggregation; Reconsideration, 83 Fed. Reg. 57324 \(Nov. 15, 2018\).](#)
[Prevention of Significant Deterioration \(PSD\) and Nonattainment New Source Review \(NSR\): Aggregation and Project Netting, 74 Fed. Reg. 2376 \(Jan. 15, 2009\).](#)

DEBATE OVER GROUNDWATER PATHWAY FOR CLEAN WATER ACT JURISDICTION CONTINUES, BUT STATES COULD STEP IN

BY: HENRY R. "SPEAKER" POLLARD, V

Various court decisions issued by mid-September 2018 indicated a potential consensus forming that groundwater, while not itself regulated navigable waters pursuant to the Clean Water Act ("CWA"), may serve as a pathway for regulated discharges of pollutants to such waters. However, these decisions – from the Ninth Circuit Court of Appeals in *Hawai'i Wildlife Fund v. City of Maui* and the Fourth Circuit in *Upstate Forever v. Kinder Morgan Energy Partners, L.P.* – have been appealed to the U.S. Supreme Court. (As part of these appeals, the high court has now asked EPA for its view of the issue, bringing EPA directly into the debate.) The Sixth Circuit Court of Appeals has since disagreed with its sister courts, setting up a conflict among the federal circuit courts on this issue. As noted in our prior newsletters, the outcome of this issue is important for determining federal jurisdiction over discharges of pollutants

to “navigable waters,” defined as waters of the United States (“WOTUS”) pursuant to the CWA’s National Pollutant Discharge Elimination System (“NPDES”) program. Compounding the uncertainty is whether state-level jurisdiction over pollutants entering groundwater and surface waters will fill any perceived gaps.

In *Kentucky Waterways Alliance v. Kentucky Utilities Company* and in *Tennessee Clean Water Network v. Tennessee Valley Authority*, the Sixth Circuit rejected plaintiff environmental groups’ claims of liability under the CWA against different power companies for contamination of surface waters near their coal-fired power plants. In so doing, the Sixth Circuit rejected the reasoning of the *Hawai’i Wildlife Fund* and *Upstate Forever* decisions on this issue. In *Kentucky Waterways Alliance*, the environmental groups’ first argument was that the groundwater, or the fractured bedrock aquifer system through which the groundwater moves, serves as a regulated “point source” as defined in the CWA from which or through which pollutants originating in a coal ash pond were discharged into the lake. The Sixth Circuit held otherwise, looking to the plain text of the CWA definition of “point source” as a “discernible, confined and discrete conveyance,” and finding that neither groundwater nor the fractured bedrock in question met this definition due to their inherently diffuse and uncertain directional nature.

The groups’ second, alternative theory in *Kentucky Waterways* was that the coal ash ponds were the point sources and the groundwater was an environmental medium providing a hydrological

connection that allowed the contamination to flow from the ponds to the lake waters. The Sixth Circuit refused to accept the groups’ interpretation of the CWA allowing for such an indirect discharge pathway. It noted in particular that the CWA’s prohibition against unpermitted discharges hinges on the addition of pollutants “to navigable water from any point source,” indicating that, for the CWA’s prohibition to apply, no intermediate medium between the point source and the navigable water can be present.

In addition, and integral to the Sixth Circuit’s refutation of the Ninth Circuit’s and Fourth Circuit’s rationales, the court opined in *Kentucky Waterways* that the environmental groups’ and these courts’ reliance on the U.S. Supreme Court plurality opinion in *Rapanos v. United States* was misplaced. The

Sixth Circuit stated that the relevant portion of Justice Scalia’s discussion in *Rapanos* – that a regulated discharge need not be directly from a point source – was, if even binding on this issue, referring to pollutants traveling through multiple and different types of point source conveyances before reaching navigable waters, rather than through a diffuse and unconfined groundwater medium. The Sixth Circuit also disputed these other courts’ reliance on the CWA’s broadly stated purposes to protect water quality,

finding that the CWA also expressly reserves to the states authority to protect pollution of waters not fitting within WOTUS (such as groundwater) and to regulate discharges from non-point sources to enable comprehensive water quality protection. Finally, the court held that the interplay of the CWA with other federal environmental laws undermines the notion of a groundwater pathway as a basis for



CWA coverage. For example, the court noted that the Resource Conservation and Recovery Act (“RCRA”) specifically addresses coal ash storage in ponds, and that to extend the CWA’s regulatory reach as the environmental groups sought would effectively gut much of RCRA’s oversight of coal ash ponds.

Recognition that the CWA retains a critical role for states in water quality protection begs the question of whether the federal courts’ decisions will ultimately determine the outcome of this groundwater pathway issue. States can and typically do regulate under state law discharges of pollutants to, and pollution in, groundwater and surface waters. State laws and regulations cannot conflict with the CWA, but they can be more stringent than CWA and NPDES program requirements, even when states are authorized by EPA to implement the NPDES program on a day-to-day basis in EPA’s stead. Where states sense that either EPA’s application of the NPDES program or a federal court’s interpretation of NPDES program elements is not broad enough in its scope or otherwise not restrictive enough to meet state water quality objectives, the states can overlay their own additional or more expansive program requirements or discharge prohibitions for groundwater and surface waters within their own jurisdiction. In that scenario, oversight of these discharges may no longer hinge primarily on the CWA and federal NPDES regulation, but rather on state laws that potentially evolve in a more patchwork approach across the nation. At least one court has recognized the potential role of state law in this respect. While agreeing with the Sixth Circuit as to the extent of federal CWA jurisdiction concerning discharges into groundwater, the very recent U.S. District Court decision in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC* also noted that state law may offer a different result.

With the ongoing uncertainty at the federal level, or if the Supreme Court should agree with the Sixth Circuit, states may evolve as the arbiters of regulatory control of discharges of pollutants to regulated surface waters that involve groundwater as an intermediate medium of transport. Therefore, how each state addresses this issue through its own water quality laws and regulations could in turn

become as important and even more varied than how the federal courts and EPA may try to resolve it.

Kentucky Waterways Alliance v. Kentucky Utilities Company, 905 F.3d 925 (6th Cir. 2018); *Tennessee Clean Water Network v. Tennessee Valley Authority*, 905 F.3d 436, 438 (6th Cir. 2018); *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, Case No. 18-CV-2148 (C.D. Ill, November 14, 2018).

Q&A

REPORTING SUBSTANTIAL RISKS UNDER TSCA 8(E)

BY: ETHAN R. WARE

The Toxic Substance Control Act (TSCA) contains a variety of reporting and recordkeeping requirements for companies that manufacture, import, process, or distribute into commerce a chemical substance or mixture. This article answers questions concerning reporting “substantial risks” under Section 8(e) of TSCA.

QUESTION 1: Who is covered by TSCA 8(e) reporting?

ANSWER: TSCA requires “any person who manufactures (including imports), processes, or distributes in commerce a chemical substance or mixture” to file a Section 8(e) Report if the processor (1) “obtains information,” (2) which “reasonably supports” a conclusion that, (3) the chemical substance or mixture “presents a substantial risk of injury to health or the environment.”

Important limitations on the reporting requirement are established by EPA guidance, including the following:

1. No report is necessary where EPA has been “adequately informed of such information”;
2. Persons are subject to reporting only to the extent they are engaged in manufacturing (importing), processing, or distributing chemicals into commerce -- labor unions, trade associations, contract testing labs, and those no longer engaged in covered actions are exempt.
3. There are no exemptions, however, for small businesses, production or import volumes, or levels of commercial activity.

QUESTION 2: What is “substantial risk” information?

ANSWER: In sum, substantial risk information is simply any “reasonable” information about an injury or risk to human health or the environment. The information need not, and typically does not, establish conclusively that a substantive risk exists. According to EPA, “[i]n deciding whether information is “substantial risk” information, one must consider (1) the seriousness of the adverse effect, and (2) the... probability of the effect’s occurrence.” The greater the seriousness of risk or effects, the less probability is required.

QUESTION 3: When is a company deemed to have “obtained information” sufficient to trigger Section 8(e) reports?

ANSWER: Section 8(e) reports relate to adverse effects in “possession of the person” or about which the person has knowledge. Examples include when:

- Officers or employees “capable of appreciating the significance of the information” receive it, or
- Training, job function, or experience causes one to “reasonably [be] expected to know” of the risks.

Companies are not compelled to actively search for substantial risks, but “negligence or intentional avoidance of information” may lead to liability.

QUESTION 4: What information is considered to already be within EPA knowledge and therefore not reportable?

ANSWER: TSCA Section 8(e) excludes from reporting any substantial risk information about which EPA has been “adequately informed.” EPA guidance suggests information within the following sources is excluded from reporting: an EPA study or report; open scientific literature; submissions required to be made to EPA by statute; publication/reports of other federal agencies; and well-established “scientific journals.” However, mandatory reports filed by your company with another agency do not qualify for the exclusion.

QUESTION 5: When are Section 8(e) reports due?

ANSWER: Substantial risks must be reported within 15 working days after obtaining the information.

It seems clear Section 8(e) reporting is not a routine occurrence. However, learning new risks or injuries from chemical substances and mixtures at your plant certainly may trigger new reporting requirements.

REGULATORY CHANGES WILL BENEFIT OIL AND GAS PRODUCERS

BY: BENJAMIN MOWCZAN

From the interior of the United States to the outer continental shelf, two amendments to existing environmental rules will soon take effect as the Trump administration continues its efforts to scale back regulatory burdens on domestic oil and gas production. The amendments are in response to an Executive Order issued by President Trump in March 2017 which required federal agencies to review and revise existing regulations that burdened the development of domestic energy resources.

I. Methane Emissions and Flaring on Federal and Tribal Lands

The Bureau of Land Management (BLM), an agency of the Department of the Interior, is charged with managing federal and tribal lands for a variety of uses, including energy production. BLM recently rolled back provisions of a final rule published in the waning days of the Obama administration aimed at curtailing waste and methane emissions from oil and gas production sites. Among other things, the *Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule* promulgated in November 2016 (“Waste Prevention Rule”) set restrictions on the venting and flaring of oil and gas on federal and tribal lands. It also regulated new, modified, and existing sources of methane emissions on land subject to federal and tribal oil and gas leases. The Waste Prevention Rule largely prohibited the venting of natural gas and mandated incremental increases in natural gas capture rates, culminating in a required 98 percent capture rate by 2026.

After reviewing the Waste Prevention Rule, BLM found, in many cases, that the costs of complying with the rule would exceed the value of the oil and gas produced, rendering a large number of “marginal wells” economically impractical for operators. With an estimated 73 percent of wells on federal lands classified as “marginal,” BLM found that the Waste Prevention Rule presented a significant roadblock for development of oil and gas resources. In addition to these economic concerns, BLM determined that the Waste Prevention Rule exceeded BLM’s statutory authority and resulted in impermissible regulatory overlap with EPA’s authority to regulate air emissions under the Clean Air Act. Unlike EPA’s New Source Performance Standards regulating new,



reconstructed, and modified sources of emissions, the Waste Prevention Rule imposed emission provisions on both new and existing sources on oil and gas production sites.

Finding it unduly burdensome on oil and gas production, BLM revised the Waste Prevention Rule by promulgating a new final rule (“Final Rule”), after notice and comment, that rescinds or revises numerous provisions of the Waste Prevention Rule. The highlights of the Final Rule are as follows:

- Eliminated the requirement for applicants to submit waste-minimization plans when applying to BLM for a drilling permit;
- Eliminated the gas capture-percentage requirements;
- Eliminated pneumatic controller equipment requirements;
- Eliminated well completion and related operations requirements;
- Modified the requirements for measuring and reporting volumes of gas vented and flared; and
- Increased the allowable quantity of royalty-free gas during initial production testing.

BLM estimates the Final Rule will save oil and gas producers over \$1 billion in compliance costs over the next ten years. Although complete implementation of the Waste Prevention Rule was clouded with uncertainty due to ongoing litigation involving challenges filed by states and industry groups, the Final Rule now gives some sense of relief to oil and gas producers as they evaluate the regulatory landscape. The Final Rule took effect on November

27, 2018. However, just hours after the Final Rule was signed, California and New Mexico filed suit to block its implementation and to reinstate the Waste Prevention Rule.

II. Offshore Oil and Gas Safety Systems

The Bureau of Safety and Environmental Enforcement (BSEE) is the lead federal agency tasked with regulating offshore oil and gas operations in a manner that balances economic development with environmental protection. To comply with President Trump's Executive Order, BSEE identified what it found to be overly burdensome regulations promulgated under the Obama administration concerning worker safety and environmental protection. Accordingly, after notice and comment, BSEE issued a final rule amending the *Oil and Gas and Sulphur Operations on the Outer Continental Shelf – Oil and Gas Production Safety Systems Rule* ("Safety Rule"). Key changes to the Safety Rule include:

- The addition of gas lift shut down valves to the list of authorized safety and pollution prevention equipment (SPPE);
- Replacement of the requirement for independent third-party certification of SPPE with new requirements for device design testing and operator recordkeeping;
- Clarification of equipment failure reporting requirements;
- Clarification of production safety system design requirements; and
- Clarification of requirement for operators to shut down production and secure wells on any facility that is impacted, or will potentially be impacted, by an emergency situation, such as a hurricane or other natural disaster.

Notably, the Safety Rule does not amend or substantively alter any of the rules promulgated in the wake of the *Deepwater Horizon* disaster, including the Drilling Safety Rule promulgated in October 2010. BSEE estimates the Safety Rule will reduce compliance costs by approximately \$131 million over the next decade. The Safety Rule takes effect on December 27, 2018.

III. Conclusion

These recent regulatory changes showcase the Trump administration's emphasis on domestic energy

production by relaxing federal standards in favor of increased self-policing from industry. However, as is often the case with regulatory changes by executive agencies, forecasting the long-term viability of the new rules is difficult given the cyclical nature of American politics. For the time being, the message is clear to oil and gas producers operating on BLM lands or the outer continental shelf: take advantage of the new rules while you can.

Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements 83 Fed. Reg. 49184–49214 (Sept. 28, 2018); *Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems* 83 Fed. Reg. 49216–49263 (Sept. 28, 2018); Exec. Order No. 13783, 82 FR 16093 (March 31, 2017).

EPA ANNOUNCES CLEANER TRUCKS INITIATIVE

BY: RYAN W. TRAIL

EPA recently announced it will promulgate regulations to further reduce nitrogen oxide (NOx) emissions from highway heavy-duty trucks and engines. The announcement of EPA's Cleaner Trucks Initiative comes on the heels of petitions for rulemaking from several state and local air agencies. Petitioners requested that EPA take the following actions:

1. Begin rulemaking to develop an "ultra-low" NOx emissions standard for on-road heavy-duty engines;
2. Propose on-road heavy-duty diesel engines meet new standard by model year 2022 (i.e., by January 1, 2022);
3. Develop phase-in requirements to fully implement the new standard by January 1, 2024; and
4. Develop guidelines to allow owners of existing heavy-duty vehicles meeting the current standard to qualify for incentive funding to purchase ultra-low NOx engines.

Although no specific action was taken to begin the rulemaking process, EPA pledged to begin studying,



meeting with stakeholders, and gathering data to develop a new and revised standard as requested.

The most recent NO_x standards for highway heavy-duty trucks and engines were promulgated in 2001. Since that time, NO_x emission standards for these types of engines have contributed significantly to an overall reduction of the national NO_x emissions inventory. According to EPA, current regulations have resulted in the reduction of more than 40% of NO_x emissions in the U.S. over the last decade.

However, the Clean Air Act requires EPA “from time to time” to revise emission standards for motor vehicles to “reflect the greatest degree of emission reduction achievable” given available technology. The recent announcement indicates EPA agreed with petitioners and believes more reductions are achievable and necessary.

NO_x is a major precursor of ozone and PM_{2.5}. In some areas of the U.S., particularly in high population density regions like California and the Northeast, heavy-duty trucks comprise the largest category of NO_x emissions sources. Petitioners and EPA agreed further reductions in NO_x emissions will be integral to these regions achieving or maintaining attainment of National Ambient Air Quality Standards for ozone and PM_{2.5}.

As part of the Cleaner Trucks Initiative, EPA stated it will work with truck and engine manufacturers, suppliers, and state and local air agencies throughout the process to gather data and input, prior to preparing a notice of proposed rulemaking. The stakeholder process will likely take approximately 24 months, giving EPA time to develop a data-driven proposal for rulemaking. As updates become available, we will share them with you.



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