

# Clean Air Update

Air Quality Regulatory Accomplishments of the Current EPA Administration

Amy Marshall

August 19, 2020



# Agenda

- ❑ Initial activity around deregulation, reform, and streamlining
- ❑ Major air regulatory activities during the current EPA administration
- ❑ Guidance versus rulemaking
- ❑ What can EPA get done by the end of 2020?
- ❑ Which accomplishments are the most “durable”?

# In the beginning...

- ❑ January 2017 – Regulatory Freeze memo
- ❑ In 2017, multiple Executive Orders were issued that led to repeals and reforms.
  - January – Reducing Regulation and Controlling Regulatory Costs (2 for 1)
  - February – Enforcing the Regulatory Reform Agenda
  - March – Promoting Energy Independence and Economic Growth (review of previous administration's energy related rules, revoked previous EO's and Climate Action Plan)
- ❑ Department of Commerce requested information on ways to streamline permitting for manufacturing.
- ❑ EPA requested comments on regulatory reform.



# Quick Reminder of the Regulatory Process

- ❑ Congress outlines a general regulatory structure (e.g., CAA), delegates the details to EPA.
- ❑ EPA rulemakings governed by the Administrative Procedures Act: public notice of a proposed rule, period for receiving comments, issuance of a final rule, including responses to comments and an explanation of how they were taken into account.
- ❑ Final agency rule may be challenged in court – 60 days to request judicial review. Can also request EPA reconsider a rule.
- ❑ Rules can be reversed through subsequent rulemaking (e.g., by the next administration) with justification.
- ❑ Congress can also revoke a rule.

# New Guidance Procedures

- ❑ EO 13891 directed agencies to catalog and post their guidance documents on a new guidance portal. [epa.gov/guidance](https://epa.gov/guidance)
- ❑ OMB memo defined what is considered guidance: generally applicable interpretive memos, policy statements, manuals, bulletins, etc. but NOT site-specific/circumstance-specific determinations. (The ADI, NSR, and Title V databases are still live.)
- ❑ May 2020 proposed rule to define guidance document and establish notice/comment procedures EPA must use when issuing guidance or changing what is on the portal.
- ❑ Guidance documents do not have the force and effect of law and are only meant to provide clarity.



# Enforcement versus Compliance

- ❑ EPA Enforcement Initiatives renamed Compliance Initiatives
- ❑ Next Gen Compliance Tools memo withdrawn, less emphasis on use of data from “innovative enforcement tools”
- ❑ EPA has not finalized a requirement for fenceline monitoring in any additional rules this term
- ❑ Rule that would have added electronic reporting to NSPS was never finalized, although each MACT RTR includes a new requirement for electronic reporting of test results and compliance reports
- ❑ COVID-19 enforcement discretion memo



# Major Air Regulatory Activities 2017-2020

- ❑ New source review (NSR)/permitting reforms
- ❑ National Ambient Air Quality Standards (NAAQS)
- ❑ Hazardous Air Pollutants (HAPs)
- ❑ Climate-related regulatory activities
- ❑ Rollback of changes to Risk Management Plan (RMP rule), refrigerant rule
- ❑ Paused the startup/shutdown/malfunction (SSM) SIP Call
- ❑ Proposal on how to consider benefits and costs in CAA rulemaking.

# NSR Reform – Some really helpful actions

- Several actions taken via issuance of guidance, memos, or site-specific determinations:
  - Memo on **projected actual emissions** – Agency should not second guess projections, facilities can “manage” emissions to projections
  - **Project emissions accounting** guidance and rulemaking, soon to be final
  - Meadowbrook – common control analysis
  - Limetree – reactivation and project aggregation
  - Adjacency guidance – narrow improvement



# NSR Reform – some more minor changes

- ❑ Project aggregation reconsideration – back to 2009 rule, some states were doing it this way anyway
- ❑ PAL guidance – basically EPA saying “PALs are great! Get a PAL!” and encouraging states to take flexible approaches.
- ❑ Ambient air guidance – very narrow improvement regarding what type of measures can be effective in precluding public access, industry advocated for more but didn’t get it.

# NSR Reform – Still waiting for...

- ❑ NSR corrections rule – EPA should finalize this year.
- ❑ Biogenic CO<sub>2</sub> proposal – coming soon.
- ❑ Final commence construction guidance – this one is controversial, some state agencies oppose the proposed guidance. Because it is only guidance, it may be ignored by states that do not agree with it.
- ❑ Additional guidance related to what constitutes routine maintenance, repair, and replacement (RMRR) – we had heard that EPA was working on such a memo but it has not materialized.
- ❑ Additional guidance or rulemaking on debottlenecking, Step 2 netting, accommodated emissions.



# NAAQS Related Activity

- ❑ Pruitt memo – back to basics, attempt to streamline the NAAQS review process so EPA can meet deadlines.
- ❑ Retained SO<sub>2</sub> and NO<sub>2</sub> NAAQS at current levels.
- ❑ Proposal to retain PM<sub>2.5</sub> NAAQS at current levels
  - Draft policy assessment seemed to signal that EPA was likely to lower the annual standard. Industry advocacy and CASAC majority recommendation to retain standards.
  - EPA expects to finalize by end of year.
- ❑ Recent proposal to retain ozone NAAQS at current level. EPA regulatory agenda indicates final in January.



# Air Toxics Regulatory Activity

- ❑ Guidance document rescinding “Once In, Always In” policy and subsequent regulatory proposal, final rule is imminent. Some states already allowing facilities to change classification.
- ❑ Many MACT Risk and Technology Review (RTR) rules.
  - The rules issued during this administration have generally not added more stringent requirements, other than a few of the chemical sector rules.
  - However, it remains to be seen how EPA will address the outcome of the recent LEAN court case over non-regulated HAPs and equipment. Example – lime manufacturing MACT only regulates PM, not all emitted HAP.
- ❑ Boiler MACT court decision, remand, and recent proposal. RTR still to come.



# Climate Related Activity

- ❑ US announced withdrawal from the Paris Climate Agreement.
- ❑ Stay and then replacement of the Clean Power Plan with the Affordable Clean Energy rule. EPA determined that the previous rule overreached their authority to go outside the facility fenceline and they eliminated everything but heat rate improvements.
- ❑ Possible 2<sup>nd</sup> action to finalize the hourly emission rate test for NSR.
- ❑ Upcoming final rule revising the associated NSPS for EGUs.
- ❑ Repeal of various other rules that regulated methane (landfills, oil and gas) or HFCs with high global warming potential.



# Climate Related Activity (cont.)

- ❑ Litigation will determine whether the ACE rule stays or goes.
- ❑ Finalizing an hourly emissions test for EGUs under NSR will certainly be litigated.
- ❑ The changes to the refrigerant rules are being litigated, the changes to the oil and gas rules will likely be litigated.
- ❑ Biden has announced a Climate Plan to achieve net zero emissions by 2050, improve resiliency. Many other companies and states have already announced such goals. Several gas pipeline projects have been cancelled and there is increased interest in investing in renewables and battery storage.



# Winds of Change...

- ❑ What could be permanent with a change in administration?
  - Actions that survive litigation
  - Actions that streamline permitting but are perceived to do little harm to the environment
- ❑ What is not likely permanent with a change in administration?
  - Guidance or memos the new administration does not agree with
  - Anything finalized in the second half of 2020 is especially vulnerable
  - Actions where the court decides the Trump EPA's revised interpretation is not valid
  - Lack of meaningful climate regulations and programs





# Thinking Ahead and Planning for Change

- ❑ Possible changes to permitting guidance/policy
- ❑ Watch to see if the PM<sub>2.5</sub> and Ozone NAAQS are reconsidered
- ❑ Look for new climate-related initiatives
- ❑ Renewed focus on Environmental Justice
- ❑ Possibility of additional PFAS requirements around air emissions and deposition, especially after EPA reviews the first round of TRI data
- ❑ A movement to use small sensors and fenceline monitoring in more regulatory actions or enforcement settlements





# Tracking Deregulatory Efforts and Litigation

- ❑ There are several online trackers:
  - NY Times environmental rollback database
  - Sabin Center/Columbia Law School – climate and science trackers
  - Harvard regulatory rollback tracker
  - Institute for Policy Integrity – litigation outcomes tracker
  - etc....
- ❑ EII publications
- ❑ Reginfo.gov website – semi-annual regulatory agenda, regulatory reform accounting tracker, items at OMB for review

**Amy Marshall, PE**  
**Technical Director**  
**ALL4**  
**919-796-3950**  
**[amarshall@all4inc.com](mailto:amarshall@all4inc.com)**

