

Air & Climate Report: October 2021

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Welcome once again to Troutman Pepper’s *Air and Climate Report*, a quarterly review of significant developments in the world of air quality and climate change law and regulation. After a slow start and a relatively quiet summer, the Biden EPA has finally started to heat things up by making a few key announcements and promising several more in short order.

Some of the recent announcements are still just setup for future actions, but are noteworthy all the same for what they foreshadow. For example, EPA’s new policy assessment for particulate matter suggests a more stringent ambient standard may be coming that could push more of the country into nonattainment, bringing with it the additional regulatory and permitting challenges associated with that designation.

Likewise, EPA’s new memorandum on “startup, shutdown, and malfunction” exemptions and affirmative defenses does not immediately require changes in how states and sources handle those events, but it reaffirms a prior policy that required states to change their rules about them. Even EPA’s denial of a petition to reconsider “project emissions accounting,” while a refusal to take action now, indicates another look at that rule may be coming in the future, although it suggests New Source Review may not be among the administration’s top priorities at the moment.

The announcements promised, but not yet out, will likely be even more significant. At the top of that list is EPA’s promise of new standards for the oil and gas industry to address methane emissions and reinstitute regulation of the transmission and storage segments of the industry. That rule may involve the use of new leak detection technologies that, once required for oil and gas facilities, may pave the way for similar requirements in other industries. The methane standards may also set a critical precedent for future climate change regulations if, as expected, EPA imposes standards not only on new facilities but existing ones as well.

Very soon we may also hear from the U.S. Supreme Court on whether it will take the case over EPA’s rule for greenhouse gas emissions from power plants. Whether the Court takes the case, and what it decides, could be critical for EPA’s ongoing effort to write a replacement for the currently vacated ACE rule and the out-of-date Clean Power Plan. More announcements may also be on the way, timed to coincide with the U.N. climate conference in Glasgow, Scotland, known as “COP 26,” which begins next week.

We hope this edition helps keep you up to date on key air- and climate-related issues — both those now coming into focus and those still on the way.

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