

EPN “All Hands” Call, Friday, January 31, 2020

This month's all-hands call discussed the Trump administration's efforts to roll back automobile emission standards and its redefinition of EPA's authority under the Clean Water Act (CWA). Bios of all of the presenters can be found below.

Trump Administration's Automobile Emissions Rollback

Margo Oge, Steve Silverman, and Jeff Alson presented a general overview of the ongoing battle between the federal government and California over regulating automobile emissions.

In the wake of Trump's 2016 presidential victory, the automobile industry was one of the first to approach the new administration, with the hopes of achieving a more relaxed fuel-efficiency standard. In response, the Trump administration proposed the Safer Affordable Fuel Efficient (SAFE) Vehicles Rule, which would freeze fuel-efficiency standards at 2020 levels. The SAFE Rule would also preempt state authority to set its own GHG standards. This includes the revocation of a California waiver approved by EPA in 2013 under the Clean Air Act (CAA), which allowed the state to set more stringent vehicle emissions standards. The final SAFE Rule is expected within the next 30 days. According to Senator Tom Carper's office, the final draft of the SAFE Rule reveals that it will add \$40 billion in costs to society.

California and 22 other states are currently in litigation against the Trump administration. The lawsuit challenges the revocation of California's authority to set more stringent vehicle tailpipe emissions standards and the zero-emission vehicles (ZEV) mandate. The federal government is trying to move the lawsuit to the Supreme Court this year. It is worth noting that four automobile manufacturers have cut a deal with California, giving the automakers more flexibility under the California standard and California more credibility in the courts. Also of note, in October, the DC Circuit Court dismissed challenges to EPA withdrawal of the Obama administration's mid-term determination on vehicle emission standards.

Redefining and Replacing “Waters of the United States” (WOTUS) with the Navigable Waters Protection Act

Cathy Winer and Nancy Stoner led a big-picture conversation on the Trump administration's new interpretation of EPA authority under the CWA. The main focus of the conversation was on the effect it would have on tributaries and wetlands.

The new rule impacts every group protecting water across the U.S. It inhibits the ability to protect major rivers and the coasts due to the narrowing of definitions of what constitutes headwaters. The Science Advisory Board (SAB) contends that this rule was not grounded in science, which the EPA does not disagree with. This was a policy decision that puts a larger emphasis on the states to manage their own waters. It also shifts responsibility away from the polluter and onto the taxpayer to keep waters free of pollution.

Tributaries are protected under the new rule, but the term “tributaries” has been redefined so as to include fewer waters. Streams that are ephemeral (i.e., run only in response to precipitation) are no longer protected. This constitutes up to 80-90% of waters in the west. Although groundwater hasn't been protected previously, groundwaters that have a direct hydrological connection to surface waters have been, but are now vulnerable. The rule also strips protections from non-navigable interstate

waters and from isolated waters that were included in the 2015 rule by virtue of their significant nexus with other protected waters. The extent to which the rule protects intermittent streams and effluent-dominated streams is unclear.

Wetlands, which serve a bevy of ecosystem services, have also had their protections impaired under the new rule. The definition of what is considered an adjacent wetland has been curtailed from both the 2015 and earlier definitions. Compared to the 2015 rule, which considered wetlands to be adjacent if they were 100 ft. from jurisdictional water or 1,500 ft. if in a flood plain of the jurisdictional water, the new rule states that the wetland must be physically touching or have a specified direct surface hydrological connection. In addition, because the significant nexus test is gone, groups of wetlands, like prairie potholes, are no longer protected. The final rule does recognize that if there is a natural feature separating the wetland from the water body, then it would be considered adjacent.

Presenters

Margo Oge is the former Director of the Office of Transportation and Air Quality (OTAQ) and served with the EPA for more than 30 years. She was Director of OTAQ for 18 years.

Steven Silverman was the EPA staff attorney on all of the rules establishing greenhouse gas (GHG) emission standards for light-duty vehicles and heavy-duty vehicles and engines, as well as the New Source Performance Standards under the Clean Power Plan. He also successfully implemented and defended primary National Ambient Air Quality Standards (NAAQS) for particulate matter, ozone, and sulfur dioxide (SO₂).

Jeff Alson is an engineer who worked for 40 years at the EPA National Vehicle and Fuel Emissions Laboratory in Ann Arbor, Michigan, and spent a decade developing and implementing the car/SUV GHG standards that are now being threatened.

Nancy Stoner is President of Potomac Riverkeeper Network and one of the nation's most experienced water policy experts. She worked for many years at EPA, and served as Acting Assistant Administrator for Water.

Cathy Winer served in the Water Law Office of the EPA Office of General Counsel for many years, and is a leading expert on wetlands under the CWA.