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REPORT



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Noteworthy Environmental Cases to Keep Your Eye On

*By Freedom S.N. Smith**

It is anticipated that the Trump administration will usher in deregulation, agency position changes, increased agency challenges, a reduction of focus on environmental justice concerns, and a potential weakening of certain incentives and credits. This article provides an overview of pending environmental litigation to watch.

Many expect the year to be eventful for environmental and utility concerns from a caselaw and regulatory perspective. It is anticipated that the Trump administration will usher in deregulation, agency position changes, increased agency challenges, a reduction of focus on environmental justice concerns, and a potential weakening of certain incentives and credits. Couple the expected administration's priority changes with the fact that we should see the resolution of quite a few consequential environmental law cases, some of which the Trump administration may change its position on in pending litigation, and we have an eventful year coming our way.

Regarding specific cases, some key environmental cases to watch now include those discussed below.

AIR

- *U.S. Environmental Protection Agency v. Calumet Shreveport Refining*, No. 23-1229 (Supreme Court)
 - The Supreme Court will be considering challenges by several small oil refineries whose petitions seeking exemption from the requirements of the Clean Air Act's (CAA) Renewable Fuel Standard (RFS) program were denied by the Environmental Protection Agency (EPA). Six of the challenging refineries petitioned for a review of the EPA's decisions in the U.S. Court of Appeals for the Fifth Circuit, which denied the government's motion for transfer to the U.S. Court of Appeals for the D.C. Circuit. The question presented is whether the venue for the refineries' challenges of the CAA's RFS program lies exclusively in the D.C. Circuit because the agency's denial actions are "nationally applicable" or, alternatively, are "based on a determination of

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nationwide scope or effect.”¹

- *Oklahoma v. U.S. Environmental Protection Agency*, No. 23-1067 (Supreme Court) and *Pacificorp v. U.S. Environmental Protection Agency*, No. 23-1068 (Supreme Court)
 - These two consolidated cases involve the question of the proper venue for a challenge to a final action by the EPA under the CAA with respect to a single state or region. The underlying issue involves the EPA’s review and disapproval of the State Implementation Plan. The specific question before the court is whether such a challenge may only be brought in the D.C. Circuit because the EPA published the action under the same Federal Register notice as actions affecting other states or regions and claimed to use a consistent analysis for all states.
- *West Virginia et al. v. U.S. Environmental Protection Agency*, No. 24-1120 (D.C. Circuit)
 - The D.C. Circuit is considering a legal challenge to an EPA rule aimed at regulating greenhouse gas emissions from power plants. The May 2024 rule, “New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule,” is the EPA’s third attempt to regulate greenhouse gas (GHG) emissions from power plants. The issues raised concern regarding whether under Section 111 of the CAA,² the EPA properly established new source performance standards for GHG emissions from new, modified, and reconstructed fossil fuel-fired electric generating units (EGUs) and emission guidelines for GHG emissions from existing fossil fuel-fired EGUs. Under the CAA’s Section 111, the EPA is required to select the “best system of emission reduction” that has “been adequately demonstrated” and is achievable for power plant emission reductions. The key disputes are the EPA’s selection of a Carbon Capture and Sequestration/Storage system, as well as certain co-firing requirements. This case relates to several actions currently consolidated with it, including:
 - *Ohio v. EPA*, No. 24-1121;

¹ 42 U.S.C. 7607(b)(1).

² 42 U.S.C. § 7411(a)(1).

- *National Rural Electric Cooperative Association v. EPA*, No. 24-1122;
- *National Mining Association v. EPA*, No. 1124; and
- *Oklahoma Gas and Electric Company v. EPA*, No. 1126.

Oral arguments on the case were held on December 6, 2024.

- *Kentucky v. U.S. Environmental Protection Agency*, No. 24-1050 (D.C. Circuit)
 - On December 16, 2024, the D.C. Circuit heard oral arguments on the consolidated petitions – *Commonwealth of Kentucky, et al. v. EPA, et al.*, No. 24-1050; *Chamber of Commerce of the United States of America, et al. v. EPA, et al.*, No. 24-1051; *State of Texas, et al. v. EPA, et al.*, No. 24-1052; *Warren Petersen, et al. v. EPA, et al.*, No. 24-1073; and *Essential Minerals Association v. EPA, et al.*, No. 24-1091 – involving challenges to the EPA's final agency action under the CAA's Section 109(d)(1) entitled "Reconsideration of the National Ambient Air Quality Standards for Particulate Matter." Specifically at issue is whether the EPA acted properly under section 109(d)(1) of the CAA, when changing an existing National Ambient Air Quality Standard (NAAQS). In this case, people will also be looking at how the D.C. Circuit applies the *Loper Bright Enterprises v. Raimondo* decision when reviewing the EPA's action.

WATER

- *San Francisco v. U.S. Environmental Protection Agency*, No. 23-753 (Supreme Court)
 - The Supreme Court heard oral arguments on October 16, 2024, regarding the City and County of San Francisco's challenge to the EPA's authority to impose certain nonquantifiable standards in pollution discharge permits issued under the Clean Water Act (CWA). San Francisco is specifically challenging the narrative prohibition section of its National Pollutant Discharge Elimination System (NPDES) permit which provides that the discharge "shall not cause or contribute to a violation of any applicable water quality standard." The specific question before the Court is whether the CWA allows the EPA (or an authorized state) to impose generic prohibitions in NPDES permits that subject permit holders to enforcement for exceedances of water quality standards without identifying specific limits to which their

discharges must conform. The U.S. Court of Appeals for the Ninth Circuit reviewed the challenge to the NPDES permit with deference to the EPA's interpretation of the CWA statute. However, the EPA is not likely to receive the same level of deference at the Supreme Court in light of the *Loper Bright Enterprises v. Raimondo* decision.

- Litigation is also underway in several district courts over the EPA's most recent attempts to define "waters of the United States" or "WOTUS" under the CWA. The definition of WOTUS is vital to determining the scope of federal authority over a water body. States and industry groups have challenged the EPA's 2023 rule, which was dramatically curtailed by the landmark U.S. Supreme Court *Sackett v. Environmental Protection Agency* decision that significantly narrowed the wetlands that may be considered to be WOTUS, as well as subsequent amendments in Texas, North Dakota, and Kentucky. Consequently, the current rule, as amended in 2024 through the conforming rule, is stayed in 27 states, creating a regulatory patchwork where older regulations are in place in those states. The relevant cases include:
 - *Commonwealth of Kentucky v. U.S. Environmental Protection Agency*, No. 24-1050 (D.C. Circuit);
 - *State of West Virginia et al. v. U.S. Environmental Protection Agency et al.*, No. 3:23-cv-00032 (D.N.D.); and
 - *Texas et al. v. U.S. Environmental Protection Agency et al.*, No. 3:23-cv-00017 (S.D. Texas).

NATIONAL ENVIRONMENT POLICY ACT (NEPA)

- *Seven County Coalition v. Eagle County*, No. 23-975 (Supreme Court)
 - The Court heard oral arguments on December 10, 2024, in this case, reviewing the Surface Transportation Board's (STB) NEPA review, which resulted in the granting of the Seven County Infrastructure Coalition's petition to construct and operate an 80-mile railway in Utah's Uinta Basin to transport crude oil from the basin to the national rail network. As part of its NEPA review, the STB considered various impacts on the railway's construction and operation within the project area but did not analyze or disclose: 1) certain downline impacts from increased train traffic on existing rail lines beyond the new railway; 2) other potential environmental effects, like the impact of increased oil refining on certain communities; and 3) the potential effects of the project on historic sites or structures along the Union Pacific line in the

county. Accordingly, petitioners claim the STB's environmental review under NEPA was improper and needed to consider additional factors. The Court will consider whether NEPA requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority.

RENEWABLES / CLIMATE CHANGE

- *Center for Biological Diversity v. U.S. Environmental Protection Agency*, No. 23-1177 (D.C. Circuit)
 - In November 2024, the D.C. Circuit held oral arguments regarding the consolidated petitions challenging the EPA's final rule establishing renewable fuel standards for 2023 to 2025 and amending other regulations for the RFS program. The updated biofuel rules set new standards for the levels of biofuels like ethanol and biodiesel that must be blended into the gasoline and diesel supply. Specifically at issue was whether the EPA's rule did enough to assess the standards' potential impact on water quality and certain species. The Center for Biological Diversity raised three issues: 1) Whether the EPA violated the Administrative Procedure Act (APA) and Endangered Species Act (ESA) in finding the Rule not "likely to adversely affect" protected species and relying on post-hoc concurrences from the services to satisfy its ESA obligations; 2) Whether the National Marine Fisheries Service (NMFS) violated the APA and ESA by finding the Rule "not likely to adversely affect" protected species; and 3) Whether the Fish and Wildlife Service (FWS) violated the APA and ESA in finding the Rule would have "no effect" on protected species. The National Wildlife Federation (NWF) raised the issue of whether the EPA violated the CAA and APA by setting volumes without finding the requisite climate benefits and that impose acknowledged environmental and environmental justice harms and billions of dollars in food and fuel costs without statutory justification.

FOREVER CHEMICALS

- *American Water Works Association et al. v. U.S. Environmental Protection Agency*, No. 24-1188 (D.C. Circuit)
 - *American Water Work Association* challenges the EPA's per- and polyfluoroalkyl substances (PFAS) National Primary Drinking Water Regulation, which establishes national primary drinking

water regulations under the Safe Drinking Water Act for PFAS. The rule sets maximum contaminant levels (MCLs) for six discrete PFAS chemicals. The petitioner claims that the EPA improperly promulgated the rule because it did not rely on the best available science and most recent data nor did it follow the process mandated by Congress for public comment.

- *Chamber of Commerce of the United States of America et al. v. U.S. Environmental Protection Agency et al.*, No. 24-1193 (D.C. Circuit)
 - This case involves a legal centering on the EPA's rules limiting human exposure to PFAS due to their longevity in the human body and the environment. Specifically, petitioners sued the EPA over its listing of two PFAS chemicals as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The specific chemicals at issue are perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA). The PFAS Designation Rule alters the landscape of spill-reporting responsibilities, waste disposal, and due diligence.

NUCLEAR

- *Nuclear Regulatory Commission v. Texas*, No. 23-1300 (Supreme Court) and *Interim Storage Partners, LLC v. Texas* (No. 23-1312) (Supreme Court)
 - The Supreme Court heard oral argument on March 5 in these consolidated cases relevant to the Nuclear Regulatory Commission's (NRC) authority. The *NRC v. Texas* case involves review of the NRC's ability to license private entities to temporarily store spent nuclear fuel away from the nuclear-reactor sites where the spent fuel was generated, as well as the right of an aggrieved party to petition for review of claims where the agency order exceeds the agency's statutory authority. The *Interim Storage Partners* case similarly involves whether the NRC's exercise of authority to issue a license to a private party to temporarily possess spent nuclear fuel at a location away from an operating nuclear power reactor was lawful under the applicable statutes.

ENVIRONMENTAL JUSTICE

- There are four related cases challenging the EPA's implementation of its environmental justice priorities, including the consideration of disparate impacts of pollution on communities, involving Louisiana and Denka Performance Elastomer LLC (Denka), a Louisiana-based neoprene maker. The cases are:

- *Denka Performance Elastomer LLC v. U.S. Environmental Protection Agency et al.*, No. 24-60351 (Fifth Circuit);
- *Denka Performance Elastomer LLC v. U.S. Environmental Protection Agency et al.*, No. 24-1135 (D.C. Circuit);
- *United States of America v. Denka Performance Elastomer LLC et al.*, No. 2:23-cv-00735 (E.D. La.); and
- *State of Louisiana v. U.S. Environmental Protection Agency et al.*, No. 2:23-cv-00692 (W.D. La.).

Louisiana convinced the district court to issue a permanent injunction blocking the EPA's enforcement of enabling disparate impact regulations under Title VI of the Civil Rights Act within the Louisiana. Still at issue is whether this ruling applies nationwide, as Louisiana argues, or whether the ruling is limited to the state as the EPA argues; the Fifth Circuit is addressing this issue. Separately, Denka has challenged the EPA's efforts to force it to reduce allegedly harmful emissions from its factory under the CAA based on alleged "imminent and substantial" health risks to nearby communities. Denka is also fighting an EPA chemicals emissions rule impacting its facility.