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AIR & CLIMATE CHANGE UPDATE:

SORTING THROUGH "EVERYTHING EVERYWHERE ALL AT ONCE"

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Agenda

I. **Climate change**
   + Federal
   + State/local

II. **Mainstream Clean Air Act**
   + Federal
   + State and NGO reaction

I. Climate Change

Federal: What a difference ~~a year~~ 9 months makes

- Program-level
  - Focus on cutting regulatory burdens (particularly including air-related) on certain strategic industrial sectors
  - Proposed revocation of “endangerment finding”
  - Executive Order: DOJ to target state climate (and other) laws that crimp domestic energy

Climate change - federal

- Regulation-specific
  - Proposed repeal of CO_2 emission standards for new and existing fossil-fuel power plants
  - Proposed termination (or gutting) of the Greenhouse Gas Reporting Program

Climate change - federal

- And beyond EPA stationary source regs – e.g.,
  - Mobile source programs
  - Wind/solar power projects
  - SEC climate-related disclosure rules: Disowned, likely to be revoked
  - CFTC guidance for markets listing voluntary carbon credit derivatives: Withdrawn

Climate change - State/local

- State/regional GHG reduction programs
  - Regional Greenhouse Gas Initiative (RGGI)
  - Other state cap-and-trade/cap-and-invest programs (CA, WA, OR; NY in progress)

Climate change - State/local

- Climate reporting
  - California
    - SB 253 (direct emissions): First reports due in 2026 (for FY 2025 emissions) ... but date TBD, no forms yet
    - SB 261 (climate-related financial risk): First reports due 1/1/26 ... but no regs yet
  - New York
    - First reports due 6/1/27 (for 2026 emissions); proposed regs pending

Climate change - State/local

- Non-conventional regulatory targets – e.g., building energy use
  - Massachusetts: Large Building Energy Reporting
  - New York City: Local Law 97

Climate change - State/local

- Litigation against Big Oil/Big Coal (mostly)
  - Primary claims: consumer protection, tort
  - Some suits continuing, but most dismissed
    - Primary dismissal grounds: justiciability (political question; global scope), federal preemption

Climate change - State/local

- State GHG reduction mandates/targets
  - ~16-24 states, depending on how you count
    - All New England states (but NH: "recommended")
  - Typically, on a statewide aggregate basis and implemented at a high policy level and/or indirectly
  - But see above re: Executive Order re: state climate laws crimping "domestic energy"

Climate change - State/local

- "Climate Superfund" statutes
  - Targets: Fossil fuel producers and/or other major GHG emitters or contributors
  - Stated purpose: Fund climate change adaptation and/or compensate for climate change damage
  - To date: Vermont (2024) and New York (2024/2025), but likely renewed efforts in several other states
  - Many legal and policy issues

Climate change - State/local

- State constitution “green amendments”
  - Montana (2024): State Supreme Court cites to strike down state statute that barred state consideration of climate impacts
  - Efforts in other states to amend state constitutions, but ...

II. Mainstream CAA

Federal level

- Similar story: Course reversals, new initiatives
- Many focused on expediting permitting
  - Particularly for strategic industries (energy, “core,” auto, AI)

Mainstream CAA - Federal

- Shifts with potentially broad impact:
  - New Source Review (NSR) permitting triggers:
    - "Begin actual construction"
    - Emissions trigger for "major modification"
    - Reactivation of idled facility
  - Title V permits: "affirmative defense"
  - Interstate ozone transport
  - National Ambient Air Quality Standard (NAAQS) for Fine Particulates (PM 2.5)

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But remember: States can be more stringent

Mainstream CAA - Federal

- NSR - “Begin actual construction”: To be limited to “emissions unit” and its “components”
  - Historic EPA position: broad, facility-wide applicability
    - Pre-permit, party may only order equipment, clear and grade site, temporarily store equipment and materials
  - Reinstates Trump I policy scrapped by Biden EPA
  - Regulations planned

Mainstream CAA - Federal

- NSR – “major modification” emissions trigger: “Actual to Project Actual”
  - Reinstate Trump I EPA policy scrapped by Biden EPA
  - Issue: What emissions to count, and when
    - No EPA “second guessing” of facility’s pre-modification emission projections unless clear error or violation of recordkeeping requirements
    - EPA enforcement only on basis of post-project actual emissions

Mainstream CAA - Federal

- NSR emissions triggers for “major modification”: Project Emissions Accounting
  - Withdraws Biden EPA’s proposed narrowing of Trump I EPA rule
  - Trump I Rule: Count both emission increases and decreases from a proposed modification in “Step 1” of determining NSR applicability
    - i.e., would the modification constitute a “significant emission increase”

Mainstream CAA - Federal

- NSR relative to reactivation of an “idled” source
  - Issue: When would resumption of idled operations require a new NSR permit?
  - Withdraws Biden-era “Reactivation Policy” (2-year rule)

Mainstream CAA - Federal

- Title V permit “affirmative defense”
  - i.e., an emergency can be a defense to exceedance of Title V emissions limit
  - 2023: EPA removes the “affirmative defense,” per 2014 D.C. Circuit ruling
  - 9/5/2025: D.C. Circuit reinstates “affirmative defense”: OK because “complete” defense (not “partial”)
  - But beware: Some states have already withdrawn “affirmative defense” from their rules

Mainstream CAA - Federal

- Ozone transport - Good Neighbor Plan (GNP)
  - Federal NOx emission limitations on both fossil power plants and industrial sources in many upwind states
    - EPA acted directly, after rejecting state efforts as insufficient
    - But stayed by SCOTUS in mid-2024 pending court challenges
  - EPA expected to soon propose to rescind and replace the GNP

Mainstream CAA - Federal

- PM 2.5 NAAQS
  - EPA expected to proposed to scrap 2024 reduction to the NAAQS
    - 2024 NAAQS created significant technical challenges in ambient impact modeling
    - EPA now sees as 2024 NAAQS as obstacle to permitting energy-related and other sources
  - Industry challenge to 2024 standard remains on hold
  - But beware: Some states have already revised their state standards to match the 2024 NAAQS

Mainstream CAA - State/NGO

- States: Uptick in enforcement in blue states?
- NGOs/citizen suits
  - Judicial boost for citizen suits?
  - AI as an NGO “force multiplier”?

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- NGOs/citizen suits
  - Judicial boost for citizen suits?
  - AI as an NGO “force multiplier”?
- Highlights risk management basics:
  - Pro-active compliance systems and culture
  - Community communication and engagement
  - Rapid response to releases and non-compliance
  - Potentially: Self-disclosure

Questions?



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