The Great Rollback: Legal Perspectives on Environmental Deregulation

December 9, 2025

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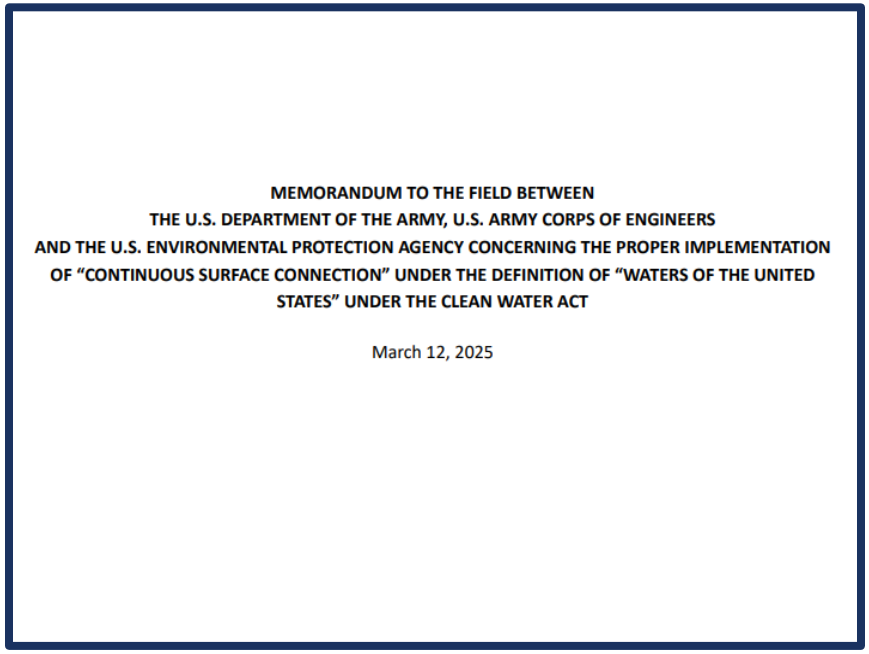
LEGAL UPDATE

Regulatory Changes You Should Know About

CLEAN WATER ACT

CLEAN WATER ACT – COE AND EPA MEMORANDUM



MEMORANDUM TO THE FIELD BETWEEN
THE U.S. DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY CONCERNING THE PROPER IMPLEMENTATION
OF "CONTINUOUS SURFACE CONNECTION" UNDER THE DEFINITION OF "WATERS OF THE UNITED STATES" UNDER THE CLEAN WATER ACT

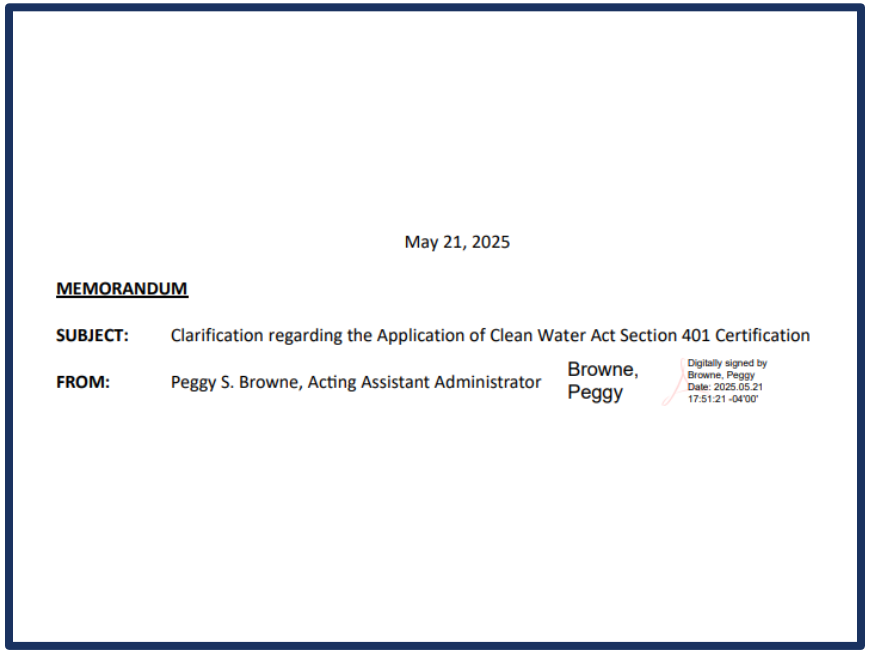
March 12, 2025

- Memorandum makes clear that "adjacent" means "physically abutting."
  - Adjacent wetlands are "those that directly 'abut' covered waters.'"
- WOTUS include only adjacent wetlands that …
  - Have a continuous surface connection because they directly abut the requisite jurisdictional water (e.g., they are not separated by uplands, a berm, dike, or similar feature)."
    - Wetlands with only an intermittent, physically remote hydrologic connection to waters of the United States do not implicate the boundary-drawing problem of *Riverside Bayview* and thus do not have the necessary connection to covered waters that triggers CWA jurisdiction."
  - "Have a continuous surface connection to a requisite covered water making it difficult to determine where the water ends and wetland begins."

CLEAN WATER ACT – UPDATED DEFINITION OF WOTUS, 90 FED. REG, 52498 (NOV. 20, 2025)

- Updates definition of "Waters of the United States"
  - Attempts to codify Supreme Court's holding in *Sackett v EPA*
- Generally, 2023 Conforming Rule left in place, but adds definitions
  - "Continuous surface connection" means having surface water at least during the wet season and abutting (i.e., touching) a jurisdictional water
  - "Relatively permanent" means standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season
  - "Tributary" means a body of water with relatively permanent flow, and a bed and banks, that connects to a downstream traditional navigable water or the territorial seas, either directly or through one or more waters or features that convey relatively permanent flow
- What is the "wet season"? Extended periods of predictable, continuous surface hydrology occurring in the same geographic feature year after year
  - Surface hydrology would be required to be continuous throughout the entirety of the wet season
- Comments are due January 5, 2026

CLEAN WATER ACT – EPA MEMORANDUM ON SECTION 401 CERTIFICATION



May 21, 2025

MEMORANDUM

SUBJECT: Clarification regarding the Application of Clean Water Act Section 401 Certification

FROM: Peggy S. Browne, Acting Assistant Administrator

Browne, Peggy

Digitally signed by Browne, Peggy
Date: 2025.05.21 17:51:21 -04'00'

- Section 401 authorizes states "a specific and limited" role in the federal licensing or permitting process
- Section 401 certification
  - Refers to the purview of a States' analysis when it evaluates a request for certification related to an application for a federal license or permit, to determine whether it will issue certification, deny certification, or waive certification
- Scope of Section 401 certification
  - States must "utilize CWA Section 401 only for its statutory purpose – to protect water quality – and not as a weapon to shut down projects"
  - Evaluation is limited to considering adverse impacts to water quality and only such impacts insofar as they prevent compliance with applicable water quality requirements

CLEAN WATER ACT - *CITY AND COUNTY OF SAN FRANCISCO V. EPA* 604 U.S. 334, 145 S.CT. 704 (2025)

- CWA does not authorize EPA to include "end result" provisions in permits
  - Provisions that do not spell out what a permittee must do or refrain from doing; rather, they make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants
- Why?
  - Text and structure of the CWA "make this clear"
    - Section 1311(b)(1)(A) and (B) = "effluent limitations"
    - Section 1311(b)(1)(C) = "any more stringent limitation"
  - Resorting to such requirements is not necessary to protect water quality
- "If the EPA does its work, our holding should have no adverse effect on water quality."

KEY CAA DEVELOPMENTS UNDER TRUMP II

1. EPA Proposes Repeal of Endangerment Finding
2. EPA Proposes Rollback of the GHG Reporting Rule
3. EPA proposes to eliminate GHG standards and rescind MATS for the power sector
4. DOJ wields the CAA as a preemptive, de-regulatory tool to block GHG liability
5. RMP Rule
6. PM-2.5

INTENDED ROLLBACK OF THE ENDANGERMENT FINDING

- On July 29, 2025, EPA proposed to rescind the 2009 Greenhouse Gas Endangerment Finding
- The Endangerment Finding is a prerequisite for regulating emissions from new motor vehicles and new motor vehicle engines
- Absent this finding, EPA lacks statutory authority under Section 202 of the Clean Air Act to prescribe standards for GHG emissions
- Public comment expired September 22, 2025

In *Massachusetts v. EPA*, the US Supreme Court ruled that greenhouse gases qualify as pollutants under the Clean Air Act

Because EPA is required to set limits on damaging pollutants, the Court directed the EPA to determine whether GHGs endanger public health and welfare

In 2009, EPA issued its "Endangerment and Cause or Contribute Findings for GHGs under Section 202(a) of the Clean Air Act"

EPA's Endangerment Finding upheld

Unlocked EPA's authority to regulate GHG emissions from cars, trucks and power plants and require mandatory reporting

INTENDED ROLLBACK OF THE GHG REPORTING RULE

- On September 12, 2025, EPA released a proposal rule to permanently remove program obligations for 46 source categories of the GHGRP in accordance with President Trump's Executive Order 14192, "Unleashing Prosperity Through Deregulation“
- Comment period expired November 3, 2025
- Will impact more than just federal GHGRP

The GHGRP, adopted by EPA in 2009, requires mandatory reporting of greenhouse gas (GHG) data and other relevant information from large GHG emission sources (25,000 metric tons or more of CO2e per year.

3. EPA PROPOSES TO ELIMINATE GHG EMISSIONS REGULATIONS AND REPEAL CERTAIN AMENDMENTS TO THE MATS FOR THE POWER SECTOR

PROPOSED ROLLBACK OF GHG STANDARDS FOR POWER PLANTS

- On June 11, 2025, EPA proposed rescinding Obama and Biden-era greenhouse gas emissions standards for the power sectors (i.e., all existing GHG power sector standards).

- To do so, the administration is proposing to revise the Obama-era, 2009 "endangerment finding" that was required by *Massachusetts v. EPA*

Key Controversy

- Traditionally, EPA decides
  - *(1)* *Whether* a source contributes significantly to air pollution that may "reasonably be anticipated to endanger public health or welfare," and then,
  - *(2)* *How* to regulate

  - Here, Trump's EPA proposes to determine that because regulating GHG emissions from power plants would not have a significant effect on air pollution, it need not regulate

PROPOSED ROLLBACK OF MATS

- On June 17, 2025, EPA proposed to repeal certain amendments issued on May 7, 2024, to the Mercury and Air Toxics Standards for power plants.
- EPA is proposing to repeal:
  - The filterable particulate matter (fPM) emission standard for existing coal-fired EGUs of 0.010 pounds per million British thermal units of heat input (lb/MMBtu). The previous fPM standard, 0.030 lb/MMBtu, would remain in place
  - The fPM emission standard compliance demonstration requiring all coal- and oil-fired EGUs to use PM continuous emission monitoring systems (CEMS). Owners and operators of coal- and oil-fired EGUs would still have the option to use PM CEMS to demonstrate compliance or use other reliable options including continuous parametric monitoring systems (CPMS) or quarterly stack testing
  - The mercury (Hg) emission standard for existing lignite-fired EGUs of 1.2 pounds per trillion British thermal units of heat input (lb/TBtu). The previous Hg standard, 4.0 lb/TBtu, would remain in place
- Comment period expired August 11, 2025.

4. FEDERAL ACTION TO PREEMPT STATE GHG REGULATION UNDER THE CAA

BACKGROUND

Trump's DOJ is suing states that are expected to seek damages for GHGs.

1. **Climate Superfund Laws (New York and Vermont)**

- Mimic CERCLA's cost-recovery mechanism—imposes strict liability on fossil fuel producers responsible for past GHG emissions; state can sue and recover in amounts proportional to past emissions
  - President Trump's EO 14260 refers to these as "extortion laws."

2. ***Anticipated*** **Lawsuits (Hawaii and Michigan)**

- Michigan and Hawaii have yet to file lawsuits against the fossils fuel producers; the DOJ suit seeks an injunction against anticipated lawsuits, citing to regional news reports
- Unusual procedure: DOJ seeks injunction to block states from suing.

3. Other Federal Actions?

- EO 14260 singled out New York's law and California's cap-and-trade for DOJ scrutiny—and mandates general scrutiny of other state policies

FOUR DIFFERENT FEDERAL ACTIONS, SAME LEGAL THEORIES

Theory 1: Clean Air Act Preemption

- The CAA "displaces" states from regulating air pollution (including GHGs) *beyond their borders* → cannot seek damages for compounds emitted outside their borders
- DOJ suit relies heavily on *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) (holding that federal common law and CAA preempted state tort law from regulating of global greenhouse gas)
- Also relies *on Massachusetts v. EPA*, 549 U.S. 497 (2007) to argue that GHGs come exclusively with EPA's jurisdiction beyond a state's borders

Theory 2: Constitutional Arguments

- When states regulate compounds emitted beyond their borders, they violate the Interstate and Foreign Commerce Clause
- When states meddle in international, diplomatic issues, they violate the foreign affairs doctrine

For now, the administration is not seeking to preempt states from regulating in-state *stationary* sources

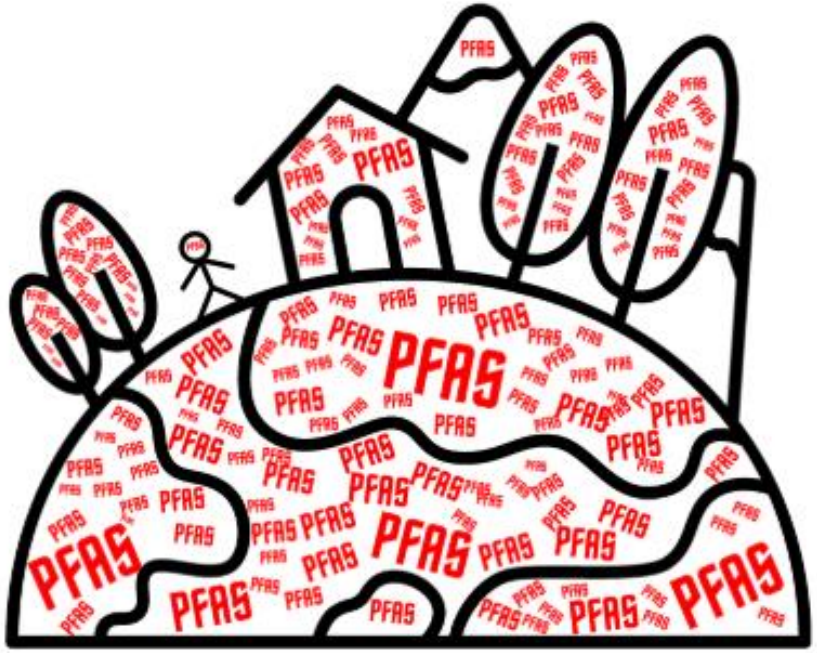
- But the lawsuits lay the groundwork for a more aggressive attack under the conflict preemption doctrine, against in-state and out-of-state regulation alike. *See* Complaint ¶ 48, *United States v. State of New York*, No. 1:25-cv-03656 (S.D.N.Y. May 1, 2025).

5. RISK MANAGEMENT PLAN (RMP) RULE

- On March 12, 2025, EPA announced it was reconsidering the 2024 RMP Rule
- The 2024 RMP Rule (finalized 2/27/2024) was intended to make communities near facilities in high accident rate industries safer and included requirements for identifying safer technologies and chemical alternatives, implementation of safeguard measures in certain cases, more thorough incident investigations, and third-party auditing
- In the announcement of its reconsideration, EPA claims the rule "has raised significant concerns relating to national security and the value of the prescriptive requirements with the rule."
- EPA also claims the 2024 RMP rule "makes America's oil and natural gas refineries and chemical facilities less safe and less competitive."
- No proposed rule rescinding or changing the 2024 RMP Rule has been released to date

6. PM-2.5

- On February 7, 2024, EPA reduced the annual PM-2.5 standard from 12.0 to 9.0 micrograms per cubic meter (μg/m3)
- Challenged by GOP states in *Commonwealth of Kentucky, et al. v. EPA*
- In the litigation, EPA initially reported that it expected to issue a proposed rule in the Fall of 2025 with a final rule expected by February of 2026 and therefore D.C. Circuit Court should stay the proceedings
- EPA is now asking the D.C. Circuit Court to vacate the Biden PM-2.5 rule claiming that the rule is unlawful because the Biden EPA did not conduct the "through review" required by the CAA and failed to consider costs
- Blatant attempt to avoid regulatory rulemaking to rollback the Biden EPA PM-2.5 rule



PFAS
PER- AND POLYFLUOROALKYL SUBSTANCES
OR
WHAT IS IN AND WHAT IS OUT

BACKGROUND

mpound	Final MCLG	Final MCL (enforceable levels)[1]
OA	Zero	4.0 parts per trillion (ppt) (also e as ng/L)
OS	Zero	4.0 ppt
HxS	10 ppt	10 ppt
NA	10 ppt	10 ppt
PO-DA (commonly known as GenX Chemicals)	10 ppt	10 ppt
ctures containing two or more of PFHxS, PFNA, HFPO- , and PFBS	1 (unitless) Hazard Index	1 (unitless) Hazard Index

- Biden EPA ***finalized*** PFAS regulations in 2024 under various statutes.
- Under **SDWA:**
  - **Established MCLs** for five individual PFAS in drinking water for (1) Public Water Systems and (2) Non-Transient Non-Community Water Systems
    - Monitoring for PFAS due 2027
    - Compliance for MCL standards due 2029

INTENDED PFAS ROLLBACKS

- EPA will likely *retain* **PFAS** and **PFOS MCLs**
  - But compliance deadlines will be delayed by two years—until **2027** for monitoring, and **2031** for compliance.
- EPA intends to ***rescind*** compliance standards set for other PFAS chemicals (**PFHxS**, **PFNA**, **HFPO-DA**, commonly known as **GenX**, and the **Hazard Index for** mixtures of these three plus **PFBS**).
- New rule Q4 2025?
- In the litigation challenging the rules, EPA asked the court to axe its determinations to regulate and set enforceable standards for the four PFAS chemicals

Compound	Final MCLG	Final MCL (enforceable levels)[1]
PFOA	Zero	4.0 parts per trillion (ppt) (also expressed as ng/L)
PFOS	Zero	4.0 ppt
PFHxS	10 ppt	10 ppt
PFNA	10 ppt	10 ppt
HFPO-DA (commonly known as GenX Chemicals)	10 ppt	10 ppt
Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS	1 (unitless) Hazard Index	1 (unitless) Hazard Index

LONG-SHOT LEGISLATION?

- Bipartisan House Bill would codify Biden EPA standards and put revisions and litigation to rest (June 26, 2025)
- H.R. 4168 is in the House Committee on Energy and Commerce—only has two sponsors

Fitzpatrick, Dingell Introduce Legislation to Codify PFAS National Drinking Water Standard

June 26, 2025

WASHINGTON, D.C. – Today, Congressman Brian Fitzpatrick (PA-1) and Congresswoman Debbie Dingell (MI-), Co-Chairs of the bipartisan Congressional PFAS Task Force, introduced the PFAS National Drinking Water Standard Act of 2025—bipartisan legislation to codify the Environmental Protection Agency's first-ever national primary drinking water regulation for per- and polyfluoroalkyl substances (PFAS).

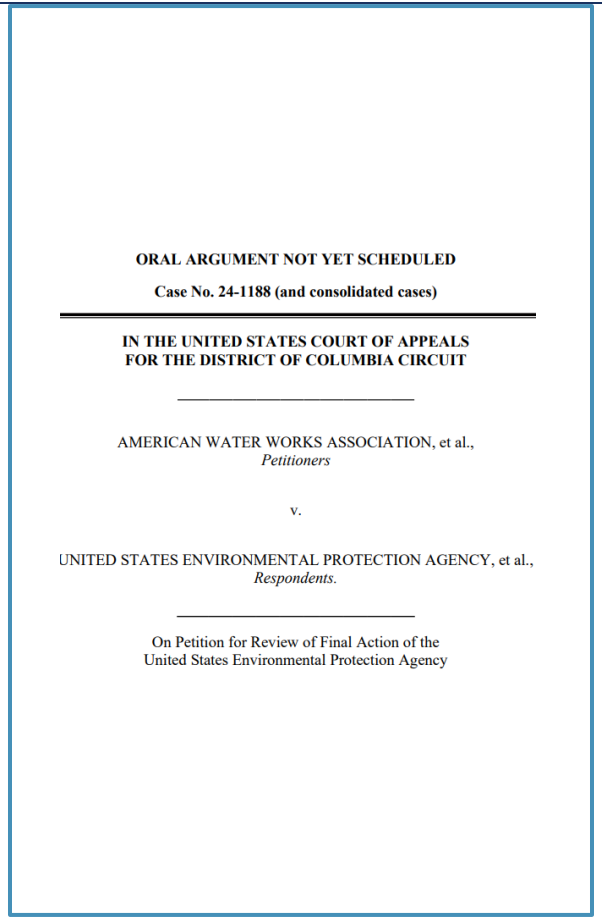
PFAS—CERCLA UPDATE

- On September 17, the EPA announced its commitment to regulating PFOA and PFOS under CERCLA and maintaining the 2024 final CERCLA hazardous substance rule.
- DOJ moved to lift the abeyance on the U.S. Chamber of Commerce lawsuit challenging the CERCLA rule. Oral argument scheduled for Jan. 20, 2026.
- The EPA outlined a new framework to provide greater regulatory certainty and consistency for future CERCLA hazardous substance designations.
- Long-shot legislation to exempt passive receivers from CERCLA liability.

- **CERCLA**: Biden EPA classified PFOS and PFOA as "hazardous substances" under CERCLA (April 2024).
- Trump II EPA retaining rule.

INDUSTRY CHALLENGE TO SDWA AND CERCLA REGULATIONS

- Challenge will likely proceed on PFOA and PFOS SDWA MCLs
- EPA likely to continue to defend designation of PFOA and PFOS as "hazardous substances under CERCLA
  - Challenging "substantial danger" determination and arguing EPA's methodology was flawed
  - Potential *Loper Bright* challenges under Section 102



ORAL ARGUMENT NOT YET SCHEDULED

Case No. 24-1188 (and consolidated cases)

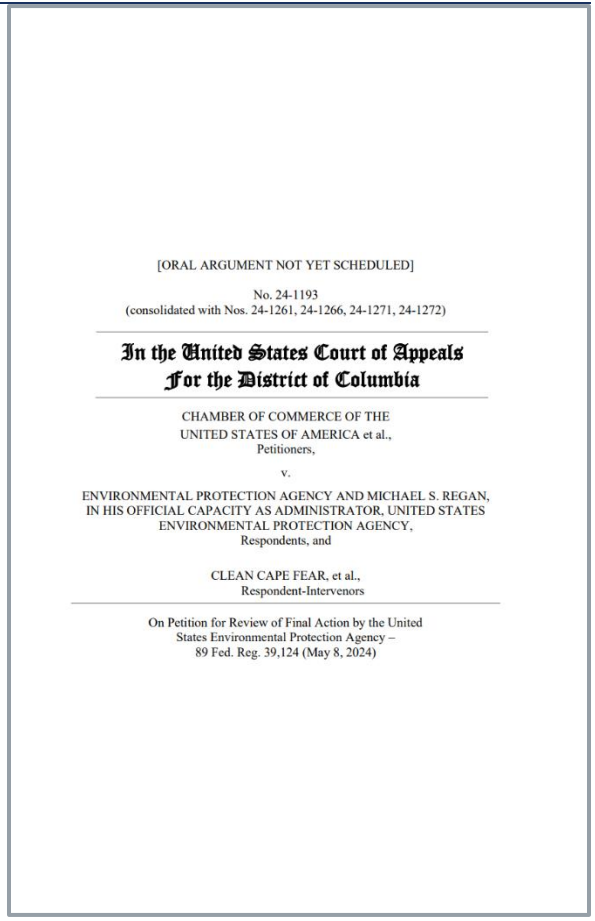
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN WATER WORKS ASSOCIATION, et al.,
Petitioners

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

On Petition for Review of Final Action of the
United States Environmental Protection Agency



[ORAL ARGUMENT NOT YET SCHEDULED]

No. 24-1193
(consolidated with Nos. 24-1261, 24-1266, 24-1271, 24-1272)

In the United States Court of Appeals
For the District of Columbia

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA et al.,
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL S. REGAN,
IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR, UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
Respondents, and

CLEAN CAPE FEAR, et al.,
Respondent-Intervenors

On Petition for Review of Final Action by the United
States Environmental Protection Agency –
89 Fed. Reg. 39,124 (May 8, 2024)

PFAS—*KNOWN UNKNOWNS*: TSCA

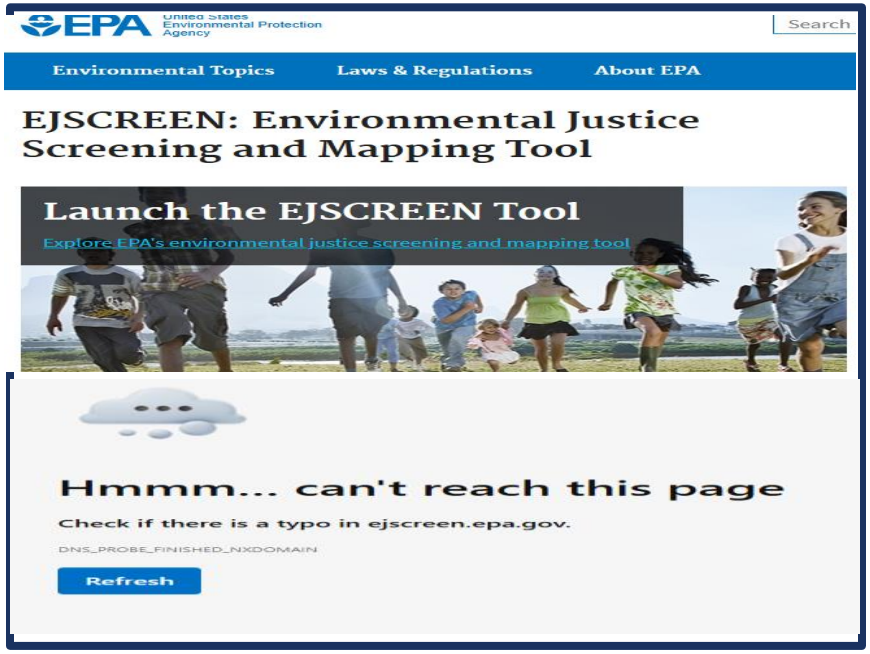
- EPA PROPOSED CHANGES ON NOV. 10.
- EXEMPTIONS FOR PFAS IN MIXTURES OR PRODUCTS AT 0.1% OR LOWER, IMPORTED ARTICLES, CERTAIN BYPRODUCTS, IMPURITIES, R&D CHEMICALS, AND NON-ISOLATED INTERMEDIATES.
- SHORTER REPORTING PERIOD – SUBMISSION PERIOD WILL BEGIN 60 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE AND WILL LAST FOR THREE MONTHS.
- 45 DAY COMMENT PERIOD FOLLOWING PUBLICATION IN THE FEDERAL REGISTER.

- Biden EPA issued final reporting rule under TSCA requiring manufacturers of PFAS and PFAS-containing products (including importers of articles) to report information on PFAS dating back to 2011. Oct. 2023.
- No *de minimis* threshold or minimum production volume.
- Reporting included PFAS in byproducts.
- Interim final rules to extend original reporting deadlines.

PFAS—*KNOWN UNKNOWNS*: RCRA

- Biden EPA ***proposed*** a rule designating 9 PFAS as hazardous constituents.
  - Will impact investigation and corrective action at RCRA TSD facilities
- Trump II EPA: rule has **not been withdrawn**

EPA CLIMATE TOOLS DISAPPEARED; JUDGE REFUSES TO RESTORE THEM (SO FAR)



- Environmental groups failed to meet the "imminent, irreparable harm" threshold necessary to secure an injunction restoring access to climate/environmental justice EPA mapping system
- Case will now proceed on the merits, to be reviewed under the APA and the Paperwork Reduction Act

NOTEWORTHY SUPREME COURT DECISIONS

THE UNITED STATES SUPREME COURT

Image Credit: Collection of the Supreme Court of the United States

WEST VIRGINIA V. EPA (2022)

- EPA cannot require power-sector "generation shifting" under the Clean Air Act without clear congressional authorization
- The decision relied on the Major Questions Doctrine, requiring agencies to point to explicit statutory authority for actions of "vast economic and political significance"
- The Court ruled that EPA's Clean Power Plan exceeded its authority by restructuring the national electricity grid rather than regulating emissions at individual power plants
- The ruling significantly limits EPA's ability to regulate greenhouse gases through broad system-wide approaches

LOPER BRIGHT ENTERPRISES V. RAIMONDO (2024)

- Overturned *Chevron* deference
- The Court held that courts—not agencies—must independently interpret statutory meaning
- Regulations by agencies like the EPA will face more stringent review
- The ruling shifts policymaking power from agencies to courts and Congress

CONGRESSIONAL IMPACTS

CONGRESSIONAL ENVIRONMENT & EMERGING ISSUES

- In the 1960s–70s, major environmental laws passed with broad bipartisan support
- Regulatory stability now depends more on agencies and courts, yet courts are simultaneously narrowing agency authority, creating greater uncertainty
- Congress is exploring legislation on data centers and AI, industries that heavily strain the grid, water supplies, and cooling infrastructure
  - New federal incentives for data-center growth or critical-minerals development may include environmental carve-outs or expedited permitting
- Instead of sweeping reforms, Congress is more likely to pursue targeted updates (e.g., water infrastructure, wildfire resilience, grid reliability)

STATE RESPONSES TO DEREGULATION

CALIFORNIA'S CAA AUTONOMY

- Since 1968, Congress has allowed California to impose stricter tailpipe emission standards through a waiver process (42 U.S.C. § 7543(b))
- The EPA must grant the waiver unless a statutory criteria applies— the waiver allows CA to escape the federal preemption of auto emissions
- Until 2025, California had received nearly 100 waivers
- Biden's EPA approved the last waiver in 2024
- Allowed California to impose a zero-emission vehicle standard with a compliance deadline for 2035 (ZEV)
- Other states can adopt California's standards once a waiver is granted—thirteen have adopted in full, or partially

TRUMP USES THE CRA TO TAKE AWAY CALIFORNIA'S TAILPIPE REGULATION AUTHORITY

- The Congressional Review Act (CRA) allows Congress to repeal agency "rules" within a lookback period
- CRA-repeals are not subject to the filibuster
- Once repealed, agencies are prevented from enacting future regulations that are "substantively the same"
- A CRA resolution (June 12), invalidated three Biden-era waiver approvals that paved the way for California rules:
  - 3035 zero-emission vehicle mandate
  - advanced clean trucks regulations, and
  - low-NOx standards for heavy-duty vehicles
- The key question in litigation will be whether the waiver grant was a "rule" or an "adjudication"—and whether a CRA resolution can repeal both, or just rules

TAKEAWAYS

- Unless a court reinstates the waiver, EPA will not be able to issue a "substantively similar" waiver to California without an Act of Congress
- Going forward, the CRA invalidation could end California (and West Coast) regulatory autonomy, since the invalidation prevents states from opting into California's standards
- Retroactively, if Trump's EPA revises federal tailpipe standards, it may argue that California must seek new waivers to avoid preemption for new regulations under Section 209
- Based on Trump II's aggressive administrative approach, EPA could try to repeal California's 50-year-old regulatory scheme by issuing relaxed standards and arguing they preempt existing California standards

WASHINGTON

- Continuing efforts to implement the Climate Commitment Act (CCA) and reduce GHGs
- CCA requires a 95% reduction in statewide GHGs by 2050
- Maintaining 100% clean electricity targets under Clean Energy Transformation Act
- Advancing clean-energy siting through programmatic EISs and the Interagency Siting Council
- Expanding state-led climate resilience planning for wildfire, drought, and flooding

WASHINGTON

- Publicly rebuked DOE's climate science report, citing rising temperatures, ocean acidification, and worsening drought
- Affirmed that state climate laws remain enforceable even if EPA weakens or rescinds federal GHG rules
- Preparing for potential loss of federal climate data, funding, and enforcement tools
- Launching "ZEVergreen" to support EV adoption after federal $7,500 rebates expired
- Exploring alternative transportation-emissions strategies if California's CAA waiver remains revoked

OREGON

- State leaders affirm Oregon will continue pursuing climate action grounded in state law and science
- Climate Protection Program (CPP) reinstated after redesign; implementation began in 2025
  - Reduce GHG emissions 50% by 2035 and 90% by 2050
- Proposed federal rescission of the Endangerment Finding creates uncertainty for transportation and industrial emissions regulation
- Transportation remains Oregon's largest emissions sector (~35%)

OREGON

- DEQ and OHA advancing PFAS protection efforts independent of federal rulemaking
- DEQ adopted rules classifying PFAS as hazardous substances under state cleanup law
- Executive Order on Clean Energy (EO 25-29)
  - Requires streamlined permitting and siting for renewable-energy, energy-storage, and transmission projects, aiming to shorten project timelines and reduce regulatory bottlenecks
- Oregon is proactively regulating large emerging energy consumers (POWER Act)

IDAHO

- Idaho relies heavily on federal environmental standards for air, water, and GHG regulation
- No statewide climate statute or economy-wide emissions-reduction program
- Environmental oversight largely implemented through federal delegation (Clean Air Act, Clean Water Act, RCRA)
- Federal rollbacks create regulatory gaps Idaho must manage through guidance, local permitting, or voluntary programs

AUDIENCE QUESTIONS