FEDERAL REGULATORY UPDATE

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FEDERAL REGULATORY UPDATE

Air

- Oil and Gas NSPS
- Risk Management Program
- Policies
- Climate

Water

- WOTUS

Environmental Justice

Compliance and Enforcement

Questions and Comments

2022 Federal Regulatory Update
2023 Federal Regulatory Update
available at
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Oil and Gas NSPS

- Obama Administration
  - 2012 NSPS Rule, 77 FR. 49490 (Aug. 16, 2012) at 40 CFR 60, Subpart OOOO
  - 2016 NSPS Rule, 81 FR 35824 (June 3, 2016) at 40 CFR 60, Subpart OOOOa
- Trump Administration
  - Policy Rule, 85 Fed. Reg. 57018 (Sep. 14, 2020)
    - Rescinded methane emissions limits for sources in the production / processing segments
  - Technical Rule, 85 Fed. Reg. 57398 (Sep. 15, 2020)
    - Fugitive emission monitoring requirements for well sites/compressor stations
    - Certification for technical infeasibility for pumps and closed-vent design
    - Expands the technical infeasibility provision to greenfield sites for the pneumatic pump requirements
    - Alternative means of emission limitation may include existing state programs

Oil and Gas NSPS

Biden Administration

- EO 13990 (Jan. 20, 2021)
  - Required all federal agencies to review all rules issued under Trump Administration
  - Required EPA to consider suspending Trump-era Oil and Gas NSPS

- Congressional Review Act
  - Passed legislation disapproving the Policy Rule
  - Signed by President Biden on June 30, 2021
  - Treated as though the rule "has never taken effect," 5 USC 801(f)(2)
  - Repealed/revised provisions of 2012 / 2016 Oil & Gas NSPS came back into effect

- Proposal to revise Oil & Gas NSPS - 86 Fed. Reg. 63110 (November 15, 2021)
  - No proposed regulatory text - EPA will issue a supplemental proposal in 2022
  - Would apply to existing sources
  - Add Subpart OOOOb - update requirements for new sources (after 11/15/21)
  - Add Subpart OOOOc - emission guidelines for states as to methane from this source category
  - Sought comments on …
    - Finding and repair leaks (fugitive emissions) using advanced technologies / Method 21
    - Zero emissions from new and existing pneumatic controllers
    - Eliminate venting of gas from oilwells and require capture / sale
    - Storage tanks to reduce VOC and methane emissions

Oil and Gas NSPS

Biden Administration

- Supplemental Proposal - 87 Fed. Reg. 74702 (December 6, 2022)
  - Purpose is to update, strengthen, and expand the Nov. 2021 standards …
    - For methane and VOC emissions from new, modified, and reconstructed facilities
    - For methane emissions from existing sources
  - Final rule sometime in 2023

- Proposal
  - Requires routine leak monitoring
    - New and existing well sites
      - Single well-head only/small well sites = Quarterly AVO (audio, visual, olfactory)
      - Two or more well-head only = Quarterly AVO and OGI/M.21 every six months
      - Major sites - Bimonthly AVO and quarterly OGI/M.21
    - Compressor stations = Monthly AVO and quarterly OGI/M.21
    - Other methane detection technologies may also be used
  - Prevent emissions at abandoned and unplugged wells
  - Creates a super-emitter response program
    - Large leaks and emission events caused by malfunctions and abnormal operations
    - Super-emitter event = 220.5 (100 kilograms) of methane per hour
    - 5 days after notice of event to determine cause
    - 10 days to correct or submit corrective action plan
  - Strengthen requirement for flares
  - Zero emissions for pneumatic pumps

- Inflation Reduction Act, Section 60113
  - Allows EPA to impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold

Oil and Gas NSPS

Oil and Natural Gas Sources Covered by EPA's Proposed New Source Performance Standards (NSPS) and Emissions Guidelines, by Site

Location and Equipment or Process Covered	Required to or Would Be Required to Reduce Emissions under EPA Rules (if finalized as proposed)	Rules that Apply			
		2012 NSPS for VOCs (OOOO)	2016 NSPS for Methane & VOCs (OOOOa)	2021 & 2022 Proposed NSPS for Methane & VOCs (OOOOb)	2021 & 2022 Proposed Emissions Guidelines for Methane (OOOOc)
Oil and Natural Gas Well Sites					
Completions of hydraulically fractured wells	✓	●	●	●	
Compressors at centralized tank batteries	✓			●	●
Fugitive emissions	✓		●	●	●
Liquids unloading	✓			●	●[1]
Pneumatic controllers	✓	●	●	●	●
Pneumatic pumps	✓		●	●	●
Storage vessels	✓	●	●[3]	●	●
Sweetening units	✓	●[2]	●[2]	●[2]	●[2]
Associated gas from oil wells	✓			●	●
Natural Gas Gathering and Boosting Compressor Stations					
Compressors	✓	●	●	●	●
Fugitive emissions	✓		●	●	●
Pneumatic controllers	✓	●	●	●	●
Pneumatic pumps	✓			●	●
Storage vessels	✓	●	●[3]	●	●
Sweetening units	✓	●[2]	●[2]	●[2]	●[2]
Natural Gas Processing Segment					
Compressors	✓	●	●	●	●
Fugitive emissions	✓		●	●	●
Pneumatic controllers	✓	●	●	●	●
Pneumatic pumps	✓		●	●	●
Storage vessels	✓	●	●[3]	●	●
Sweetening units	✓	●[2]	●[2]	●[2]	●[2]
Transmission and Storage Segment					
Compressors	✓		●	●	●
Fugitive emissions	✓		●	●	●
Pneumatic controllers	✓		●	●	●
Pneumatic pumps	✓			●	●
Storage vessels	✓	●	●[3]	●	●

All of the sources listed above also would be covered by EPA's proposed Super-Emitter Response Program

[1] Added in 2022 supplemental proposal
[2] Covered for SO_2 only
[3] Covered for VOCs only

Oil and Gas NSPS

2021 Proposed Rule – Table 4

TABLE 4—PROJECTED EMISSIONS REDUCTIONS UNDER THE PROPOSED RULE, 2023–2035 TOTAL

Pollutant	Emissions reductions (2023–2035 total)
Methane (million short tons)[a]	41
VOC (million short tons)	12
Hazardous Air Pollutant (million short tons)	0.48
Methane (million metric tons CO_2 Eq.)[b]	920

[a] To convert from short tons to metric tons, multiply the short tons by 0.907. Alternatively, to convert metric tons to short tons, multiply metric tons by 1.102.
[b] CO_2 Eq. calculated using a global warming potential of 25.

2022 Proposed Rule – Table 4

TABLE 4—PROJECTED EMISSIONS REDUCTIONS UNDER THE PROPOSED RULE, 2023–2035 TOTAL

Pollutant	Emissions reductions (2023–2035 total)
Methane (million short tons)[a]	36
VOC (million short tons)	9.7
Hazardous Air Pollutant (million short tons)	0.39
Methane (million metric tons CO_2 Eq.)[b]	810

[a] To convert from short tons to metric tons, multiply the short tons by 0.907. Alternatively, to convert metric tons to short tons, multiply metric tons by 1.102.
[b] Carbon dioxide equivalent (CO_2 Eq.) calculated using a global warming potential of 25.

Oil and Gas NSPS

2021 Proposed Rule
Table 5

TABLE 5—BENEFITS, COSTS, NET BENEFITS, AND EMISSIONS REDUCTIONS OF THE PROPOSED RULE, 2023 THROUGH 2035

[Dollar Estimates in Millions of 2019 Dollars][a]

	3 percent discount rate		7 percent discount rate	
	Present value	Equivalent annual value	Present value	Equivalent annual value
Climate Benefits[b]	$55,000	$5,200		
Net Compliance Costs	7,200	680	6,300	760
Compliance Costs	13,000	1,200	10,000	1,200
Product Recovery	5,500	520	3,900	470
Net Benefits	48,000	4,500	49,000	4,500
Non-Monetized Benefits	Climate and ozone health benefits from reducing 41 million short tons of methane from 2023 to 2035. $PM_{2.5}$ and ozone health benefits from reducing 12 million short tons of VOC from 2023 to 2035[c]. HAP benefits from reducing 480 thousand short tons of HAP from 2023 to 2035. Visibility benefits. Reduced vegetation effects.			

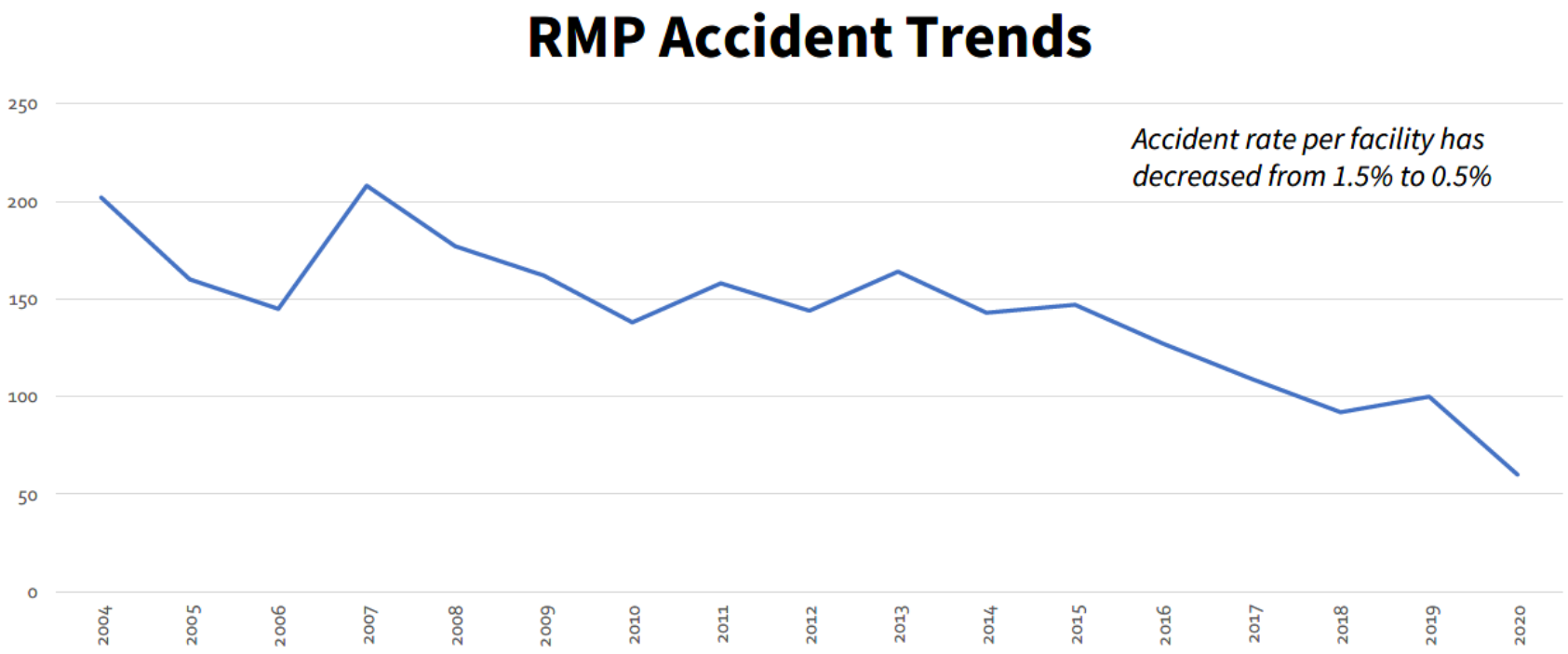
2022 Proposed Rule
Table 5

TABLE 5—BENEFITS, COSTS, NET BENEFITS, AND EMISSIONS REDUCTIONS OF THE PROPOSED RULE, 2023 THROUGH 2035

[Dollar estimates in millions of 2019 dollars][a]

	Present value	Equivalent annual value	Present value	Equivalent annual value
	3 Percent Discount Rate			
Climate Benefits[b]	$48,000	$4,500	$48,000	$4,500
	3 Percent Discount Rate		7 Percent Discount Rate	
Net Compliance Costs	$14,000	$1,400	$12,000	$1,400
Compliance Costs	19,000	1,800	15,000	1,800
Product Recovery	4,600	440	3,300	390
Net Benefits	34,000	3,200	36,000	3,100
Non-Monetized Benefits	Climate and ozone health benefits from reducing 36 million short tons of methane from 2023 to 2035. $PM_{2.5}$ and ozone health benefits from reducing 9.7 million short tons of VOC from 2023 to 2035.[c] HAP benefits from reducing 390 thousand short tons of HAP from 2023 to 2035. Emissions reductions from the super-emitter response program. Visibility benefits. Reduced vegetation effects.			

Risk Management Program



- **97% of all RMP facilities had no RMP reportable accidents.**
- **Most RMP reportable accidents occurred at facilities with complex processes.**

Source: EPA

Risk Management Program

- 82 Fed. Reg. 4594 (January 13, 2017)

-Initiated under EO 13650, issued by President Obama, after West Fertilizer explosion/fire
EO required agencies to improve risk management practices

-Major Changes
Root cause analysis for 'catastrophic release' or a 'near-miss'
Creates uniform definition of 'catastrophic release'
No definition of 'near-miss' ("could reasonably have resulted in a catastrophic release")

Independent third-party to perform compliance audit after a reportable release
Standards for third-party qualifications, certifications, findings, response to findings

Adds Safer Technology and Alternatives Analysis (STAA) to PHA
Applies to paper, petroleum and coal, and chemical manufacturing

Require additional coordination with local emergency response agencies
Annual notification exercise, annual tabletop exercise, and field exercises every 5 years

Increase public availability of information
Provide information, upon request, to LEPC
Provide information to the public, via web-site or similar means
Hold public meeting after a reportable accident

-Originally effective March 14, 2017, but multiple attempts to delay
Effective date delayed until March 21, 2017 under Priebus Memorandum
Effective date delayed until June 19, 2017, 82 Fed. Reg. 13968 (March 16, 2017)
Effective date delayed until February 19, 2019, 82 Fed. Reg. 27133 (June 14, 2017)
Vacated by D.C. Circuit on August 17, 2018
Effective on December 3, 2018 due to court decision, 83 Fed. Reg. 62268 (Dec. 3, 2018)

Risk Management Program

RMP Reconsideration Rule, 84 Fed. Reg. 69834 (Dec. 19, 2019)

-Rescinds

Independent third-party to perform compliance audit after a reportable release
Safer Technology and Alternatives Analysis (STAA) to PHA
Root cause analysis for a reportable release or a 'near-miss'
Providing information to the public upon request and/or on web-site

-Modifies

Provisions regarding providing certain information to local emergency response
Modified to information necessary for developing local plan
Frequency for field exercises to a more flexible schedule
Modified to require consultation with local official to establish frequency
Requirement to hold public meeting after incident
Modified to only for incident with off-site impacts

-Savings

$87M per year in total annual cost savings (averted costs)

Risk Management Program

What	Due Date
Public Meetings	Within 90 days of any qualifying accident that occurs after March 15, 2021
Develop Emergency Response Programs	Within three years of owner or operator determining that facility is subject to the provisions
Develop exercise plans and schedules	December 2023
Conduct first notification drill	December 2024
Conduct first tabletop exercise	December 2026
Conduct first field exercise	According to the exercise schedule established by the owner or operator in coordination with local response agencies
Submit RMP with new information elements	The owner or operator would provide new information elements with any initial RMP or RMP resubmission made after December 2024.
Comply with new emergency coordination requirments	Already in effect as of September 21, 2018
Comply with remaining minor accident prevention provisions	Already in effect as of September 21, 2018

Risk Management Program

- EO 13990 (Jan. 20, 2021)
  - Required all federal agencies to review all rules issued under Trump Administration
- EPA
  - Held two virtual public listening sessions on June 16 and July 8, 2021
  - Open comment period from May 28 to July 31, 2021
  - Stated it will provide "maximum protection possible" and will make environmental justice a key focus
- GAO Report, February 2022
  - Climate change may exacerbate natural hazards (flooding, storm surge, wildfires, sea level rise) which could potentially lead to accidental releases of hazardous chemicals
  - 3,200 facilities are located in areas where natural hazards may be impacted by climate change
  - EPA should ensure that facilities are managing risks from natural hazards / climate change

Risk Management Program

- Safer Communities by Chemical Accident Prevention, 87 Fed. Reg. 53556 (August 31, 2022)

RMP Proposed Provisions

- Natural hazards and power loss evaluation emphasized
- Facility siting evaluation emphasized
- Safer technologies and alternatives analysis (STAA)
- Root cause analysis incident investigation
- Third party compliance audits
- Enhanced employee participation
- Enhanced community notification of chemical releases
- Enhanced information availability of chemical information

Source: EPA

- Final rule by August 2023

Risk Management Program

Safer Communities by Chemical Accident Prevention

RMP Proposed Provisions

- Natural hazards and power loss evaluation emphasized
  - Added to hazard evaluation
  - Includes climate change as a risk to evaluate
- Facility siting evaluation emphasized
  - Added to hazard evaluation
  - Applies to placement of sources
- Safer technologies and alternative risk management analysis (STAA)
  - Applies to NAICS 324 (petroleum and coal products manufacturing processes) and NAICS 325 (chemical manufacturing) located within 1 mile of another 324/325 facility; and NAICS 324 facility using hydrofluoric acid in an alkylation unit
  - Consider STAA in order to eliminate risk from process hazards
- Root cause analysis incident investigations
  - After an RMP-reportable accident
- Third party compliance audits
  - 2 accidents within 5 years / 1 accident within 5 years at 324/325
- Enhanced employee participation
  - Include most knowledgeable employees in evaluation
- Enhanced community notification of chemical releases
  - Inform public via community notification system
- Enhanced information availability of chemical information
  - Public request for chemical hazard information if they reside within 6 miles

- Storage incident to transportation
  - 48 hours after disconnect from motive power that delivered it before adding to threshold determination

Policies - Petitions for Objection Under Title V

- EPA may object to a proposed Title V permit
  - EPA has 45 days from receipt of proposed permit, 40 CFR 70.8(c)
  - Any person may petition EPA within 60 days of expiration of EPA's 45 days, 40 CFR 70.8(d)

    EPA must object "if petitioner demonstrates … that the permit is not in compliance with the requirements" of CAA , 42 USCA 7661d(b)(2)
  - Used by NGOs/EPA to 'override' state decisions and review prior preconstruction permit decisions

- *PacifiCorp Energy* Decision, Oct. 16, 2017 - EPA will limit its review to whether the Title V permit:
  - Has accurately incorporated "applicable requirements" and "includes adequate monitoring, recordkeeping, and reporting requirements to assure compliance with the terms and conditions of the preconstruction permit
  - Will not review prior PSD Program decisions that are incorporated into a Title V permit (i.e., will not "second-guess")

- *Valero Refining-Texas* Decision, June 30, 2020
  - Duly issued preconstruction permits will establish the NSR-related "applicable requirements" for the purposes of title V, and the terms and conditions of such permits should be incorporated into the Title V permit without further review by EPA, citing the Big River Steel Order.
  - "The task of TCEQ in issuing or modifying the title V permit is to incorporate the terms and conditions of the underlying title I permit and to ensure there are adequate monitoring, recordkeeping, and reporting requirements to assure compliance with those terms and conditions."

- *Environmental Integrity Project v EPA*, 969 F3d 529 (5th Cir. 2020)
  - EPA's view that Title V permitting process is not the vehicle for re-examining the substantive validity of prior PSD decisions is entitled to deference

Policies - Petitions for Objection Under Title V

- *Sierra Club v EPA*, 964 F3d 882 (10th Cir. 2020)
  - Vacated the October 2017 *PacifiCorp Energy* decision
  - AR include all items listed in Section 70.2 and all provisions under state implementation plan
  - "So all of the Act's requirements constitute 'applicable requirements' under the regulation."

- *PacificCorp Energy* Petition, filed Jan. 14, 2022
  - Sierra Club filed another petition for objection seeking to have EPA review prior PSD decisions
  - Administrator Regan denied the peition on Septemebr 27, 2022
  - EPA will apply the reasoning of Big River Steel (October 31, 2017) when issuing and reviewing Title V permits and reviewing petitions on permits for sources in states outside of the Tenth Circuit
  - EPA continues to believe that the interpretation of the CAA in *Environmental Integrity Project* is correct
  - For the Tenth Circuit, announced an approach from 2016:
    - Burden on petitioner that the permitting decision was not in compliance with the requirements of the Act, including the requirements of the SIP
    - Such requirements include that the permitting authority: (1) follow the required procedures in the SIP; (2) make PSD determinations on reasonable grounds properly supported on the record; and (3) describe the determinations in enforceable terms
    - EPA generally will look to see whether the petitioner has shown that the state did not comply with its SIP-approved regulations governing PSD permitting, or whether the state's exercise of discretion under such regulations was unreasonable or arbitrary

Policies - Once In, Always In

- May 1995 Seitz Memorandum

-First set out the OIAI Policy

-Facilities that are major sources on first compliance date of MACT standard must comply permanently with standard

- Wehrum Memorandum, dated January 25, 2018

-Supersedes the May 1995 Seitz Memorandum, which is withdrawn "effective immediately"

-Must be withdrawn because "contrary to the plain language of the CAA"

-OIAI Policy forces area sources to comply with major source requirements

Nothing in definition of 'major source' or 'area source' supports this result

Congress placed "no temporal limitations" on the determination of whether a source emits or has PTE

EPA had no authority to impose temporal limitation (ie, before the 'first compliance date')

- Major source can become an area source when it takes …

An enforceable limit on its PTE HAP, and

Measures to bring HAP emissions below the applicable threshold, no matter when measures are taken

- Source will not be subject to major source requirements, including MACT, "so long as the source's PTE remains below the applicable HAP emission thresholds"

Policies - Once In, Always In

- *California Communities Against Toxics v EPA*, 934 F.3d 627 (D.C. Cir. 2019)

-Petitioners claimed that the Wehrum Memorandum is a rule requiring notice and comment

-DC Circuit held that Wehrum Memorandum was not a final agency action under APA

-Not subject to judicial review

- Reclassification Rule, 85 Fed Reg 73854 (November 19, 2020)

-Amended 40 CFR 63.1 and added 63.1(c)(6)

-Codifies the Wehrum Memorandum

-A major source may become an area source at any time upon reducing its emissions of and potential to emit hazardous air pollutants to below the major source thresholds

Subject to major source requirements until reclassification becomes effective

Subject to all applicable area source requirements, including notification requirements

Reclassification does not absolve source of violations committed during major source status

- EO 13990 (Jan. 20, 2021)

-Required all federal agencies to review all rules issued under Trump Administration

- EPA actions

-As per EPA Rule List – Fall 2021, EPA is to review the Reclassification Rule and publish for comment a notice of proposed rulemaking either suspending, revising, or rescinding the rule

-But, on Feb. 28, 2022, a federal judge granted EPA's unopposed motion to hold a case in abeyance until Fall 2022, when it intends to revise or rescind the rule

-No Notice of Proposed Rulemaking issued to date

Climate

- Paris Agreement – rejoined on Day 1

Paris Climate Agreement

JANUARY 20, 2021 • STATEMENTS AND RELEASES

I, Joseph R. Biden Jr., President of the United States of America, having seen and considered the Paris Agreement, done at Paris on December 12, 2015, do hereby accept the said Agreement and every article and clause thereof on behalf of the United States of America.

- Executive Order 14008, January 27, 2021
  - A "whole-of-government" approach
  - Paused new oil and gas leased on public lands / offshore waters

- Announced climate goals:
  - Reducing greenhouse gas pollution from 2005 levels by 50-52% in 2030 as part of the U.S. Nationally Determined Contribution (NDC) under Paris Agreement
  - Creating a carbon pollution-free power sector by 2035
  - Reaching net-zero emissions economy-wide by no later than 2050

Climate

Social Cost of Carbon

- Executive Order 13990, January 20, 2021
  - Re-established use of the Social Cost of Carbon and the Interagency Working Group (IWG)
- IWG's Interim Estimates Technical Support Document, February 2021
  - Returned to interim estimates developed by the IWG developed in 2017
  - "Appropriate values to use in conducting benefit-cost analyses of policies that affect GHG emissions"

Table ES-1: Social Cost of CO_2, 2020 – 2050 (in 2020 dollars per metric ton of CO_2)[3]

	Discount Rate and Statistic			
Emissions Year	5% Average	3% Average	2.5% Average	3% 95th Percentile
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

- *State of Louisiana, et al v. Biden*, No. 2:21-cv-01074, U.S. Dist. Court, Western Dist. of Louisiana
  - Preliminary Injunction issued on Feb. 11, 2022 against multiple federal agencies, including EPA
  - Fifth Circuit granted stay of district court's injunction
  - US Supreme Court denied review of Fifth Circuit decision

Climate

Carbon Capture, Use, and Sequestration (CCUS)

- CEQ's CCUS Guidance, 87 Fed. Reg. 880, Feb. 16, 2022
  - US "will likely have to capture, transport, and permanently sequester significant quantities of" CO2 to reach net zero
  - Federal government has an existing regulatory framework that is capable of safeguarding the environment, public health, and public safety as CCUS projects move forward
  - Provides guidance on …
    - Facilitating Decision Making on CCUS Projects and Carbon Dioxide Pipelines
    - Public Engagement and Interdisciplinary Research
    - Understanding Environmental Impacts

- BLM's Instruction Memorandum No. 2022-041, June 8, 2022
  - Policy for authorizing rights-of-way (ROWs) to use public lands for site characterization, transportation, injection, capture, and geologic sequestration of CO2
  - Includes authorizing use of pore space managed by the BLM when wells are on private or state-owned lands or lands managed by another federal agency

- LDNR's Request for Class VI primacy
  - Application in May 2021, with final application in September 2021
  - Responded to EPA's comments on December 7, 2022

Climate

Power Sector

- *West Virginia v EPA*, 142 S.Ct. 2587 (2022)
  - "But the only interpretive question before us, and the only one we answer, is more narrow: whether the "best system of emission reduction" identified by EPA in the Clean Power Plan was within the authority granted to the Agency in Section 111(d) of the Clean Air Act. For the reasons given, the answer is no."
  - Invoked the 'major questions' doctrine
    - There are extraordinary cases in which the history and the breadth of the authority that the agency has asserted and the economic and political significance of that assertion provide a reason to hesitate before concluding that Congress meant to confer such authority
    - Agency must point to clear congressional authorization for the power it claims
  - EPA could not for Block#2 (shift to natural gas) or Block#3 (shift to non-carbon sources)

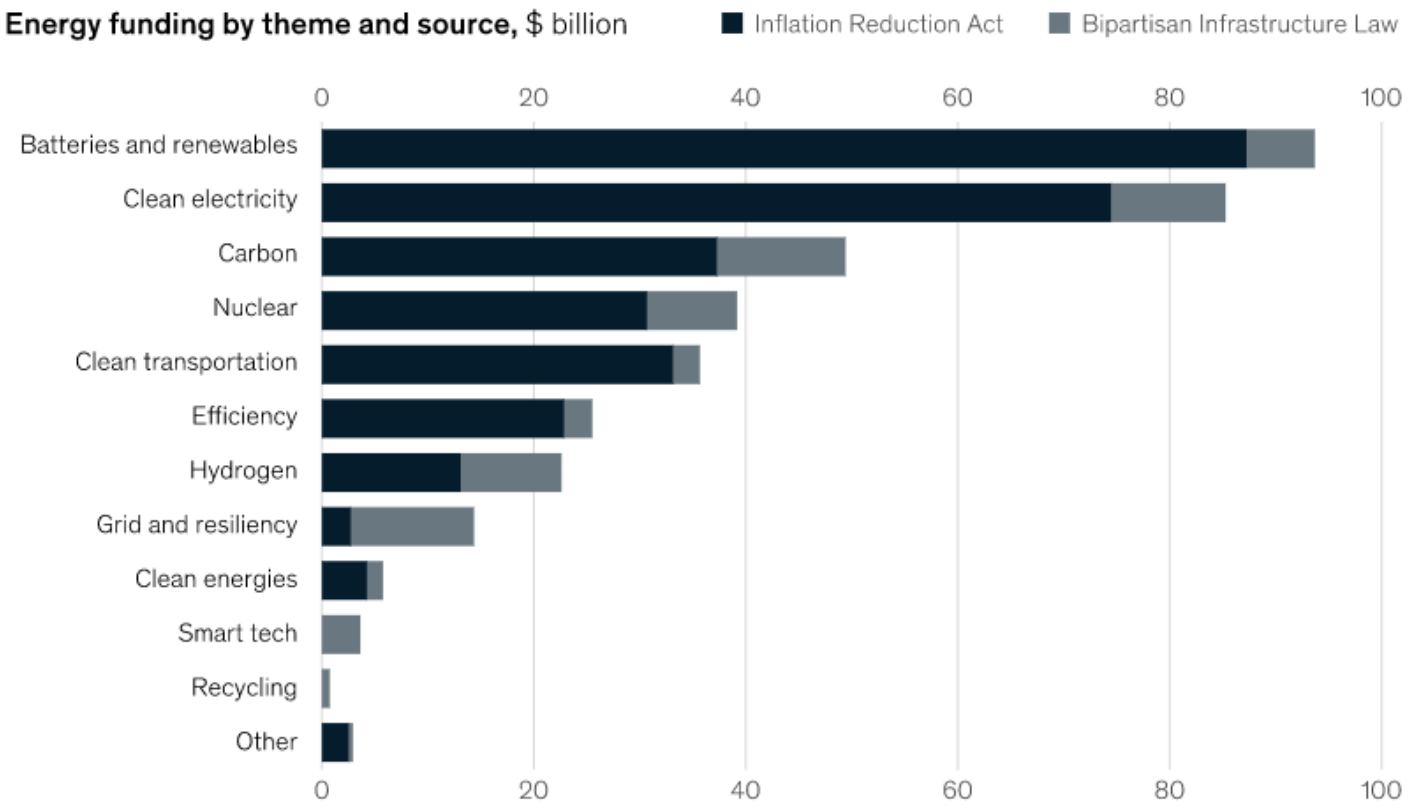
- EPA's White Paper, April 2022
  - Examines technologies for reducing GHGs from combustion turbine EGUs
  - Intended to assist states in their consideration of technologies and measures that may be implemented to reduce GHG emissions
  - Information "may also be useful to EPA in future development of [NSPS], which must be based on the 'best system of emission reduction … adequately demonstrated.'"

- EPA developing an approach for achieving meaningful reductions in emissions from existing fossil-fuel fired power plants
  - EPA plans to issue a proposal in Spring 2023

Climate

Bipartisan Infrastructure Law (November 6, 2021)
Inflation Reduction Act of 2022 (August 16, 2022)

Energy funding from the Bipartisan Infrastructure Law and the Inflation Reduction Act spans major funding themes, totaling $370 billion.



Source: McKinsey & Company

Climate

Inflation Reduction Act of 2022 (August 16, 2022)

- $370B for clean energy projects
  - Myriad of tax incentives and credits and grant / loan programs
    - Loan guarantees for innovative clean energy technologies
    - Deployment of wind farms and solar arrays
    - Loan guarantees for projects that retool, repower, repurpose, or replace energy infrastructure
    - Production tax credit for domestic manufacturing of components
  - Greenhouse Gas Reduction Fund ($27B)
    - Projects that reduce GHG emissions, with emphasis on projects that benefit EJ communities
  - Billions to cut air pollutants from targeted local sources, particularly in areas with EJ concerns
  - CO2 sequestration: 45Q tax credit increased - $80/ton (permanent) and $60/ton (EOR)
  - IRA Section 60104(a): $117.5M to deploy, integrate, support, and maintain fenceline air monitoring, screening air monitoring, national air toxics trend stations
  - IRA Section 60104(c): $3M to deploy, integrate, and operate air quality sensors in EJ communities.

Bipartisan Infrastructure Law, November 6, 2021

- Carbon storage validation and testing
  - $2.5B to develop large-scale commercial carbon sequestration projects and supporting transport infrastructure
- Office of Clean Energy Demonstrations
  - $2.5B for carbon capture demonstrations
  - $8B for hydrogen hubs
- Civil Nuclear Credit Program
  - $6B to prevent premature retirement of nuclear reactors

Climate

Trends

Table ES-2: Recent Trends in U.S. Greenhouse Gas Emissions and Sinks (MMT CO_2 Eq.)

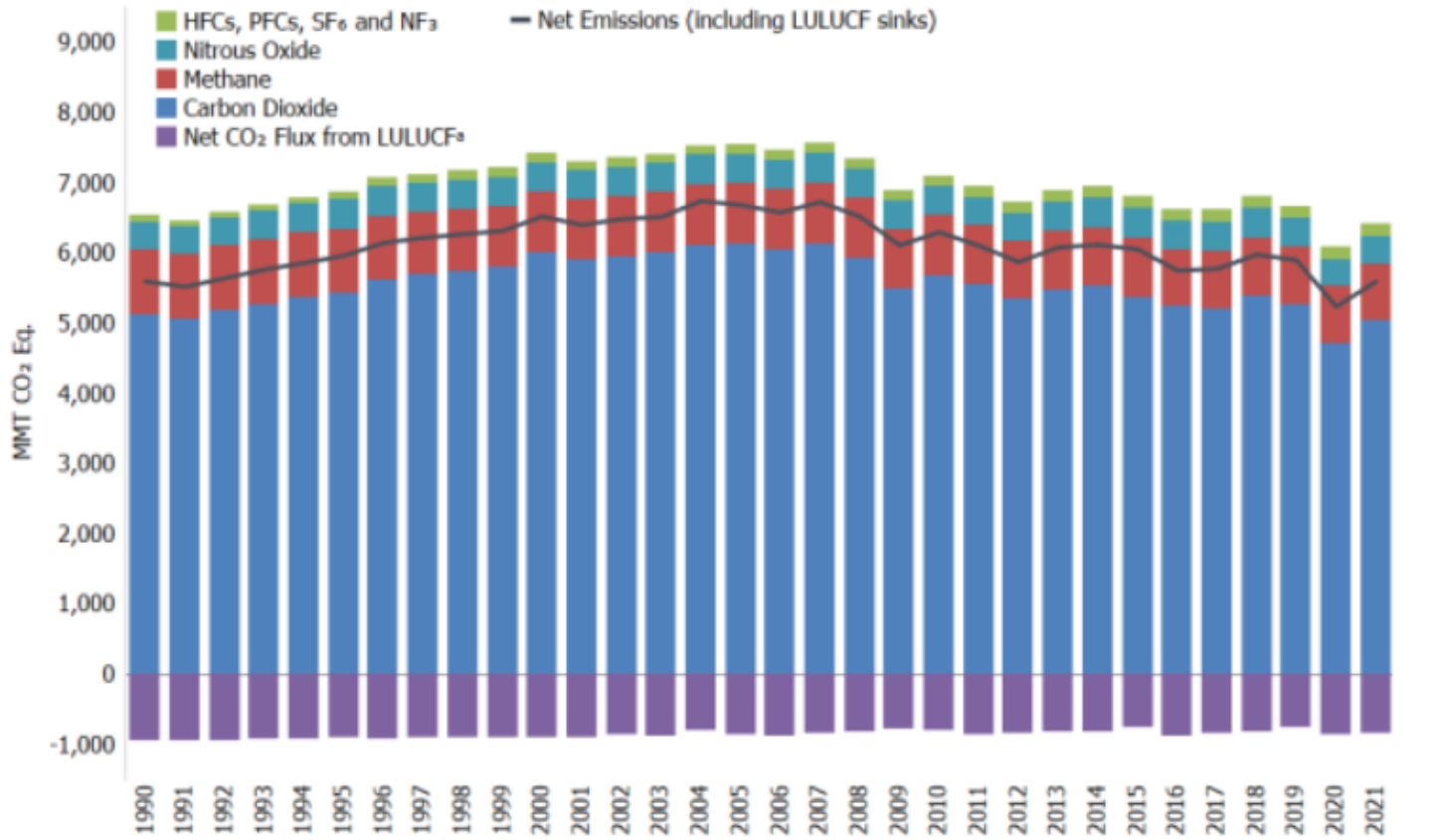
Gas/Source	1990	2005	2017	2018	2019	2020	2021
CO_2	5,121.4	6,132.4	5,212.1	5,378.0	5,259.8	4,714.4	5,048.2
CH_4[c]	868.7	791.2	762.8	774.2	767.8	742.3	727.4
N_2O[c]	396.7	405.1	402.8	418.5	399.1	377.7	384.8
HFCs	39.0	116.4	160.8	160.9	165.4	168.2	175.1
PFCs	21.8	6.1	3.8	4.3	4.0	3.9	3.5
SF_6	30.5	15.5	7.2	7.1	7.8	7.5	8.0
NF_3	+	0.4	0.5	0.5	0.5	0.6	0.6
Total Gross Emissions (Sources)	**6,478.3**	**7,466.9**	**6,550.0**	**6,743.4**	**6,604.4**	**6,014.5**	**6,347.7**
LULUCF Emissions[a]	57.9	72.4	68.3	64.4	64.2	76.4	77.8
CH_4	53.5	61.3	60.1	57.3	56.9	65.4	66.0
N_2O	4.4	11.1	8.3	7.0	7.3	11.0	11.8
LULUCF Carbon Stock Change[b]	(938.9)	(853.5)	(842.5)	(829.5)	(768.2)	(852.5)	(832.0)
LULUCF Sector Net Total[c]	(881.0)	(781.1)	(774.2)	(765.1)	(704.0)	(776.2)	(754.2)
Net Emissions (Sources and Sinks)	**5,597.3**	**6,685.8**	**5,775.8**	**5,978.3**	**5,900.3**	**5,238.3**	**5,593.5**

Source: EPA GHG Emissions and Sinks, 1990 - 2021

Climate

Trends

Figure ES-1: U.S. Greenhouse Gas Emissions and Sinks by Gas

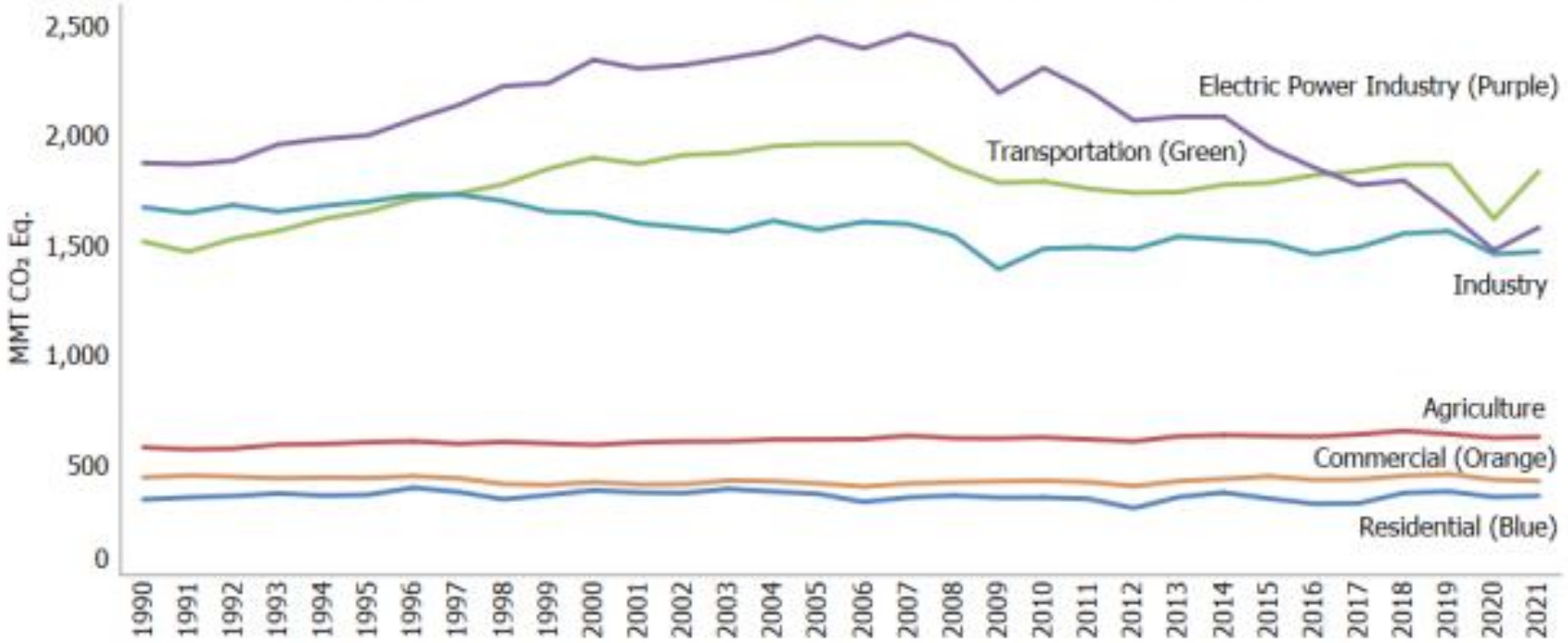


Source: EPA GHG Emissions and Sinks, 1990 - 2021

Climate

Trends

Figure ES-13: U.S. Greenhouse Gas Emissions Allocated to Economic Sectors



Source: EPA GHG Emissions and Sinks, 1990 - 2021

Climate

Trends

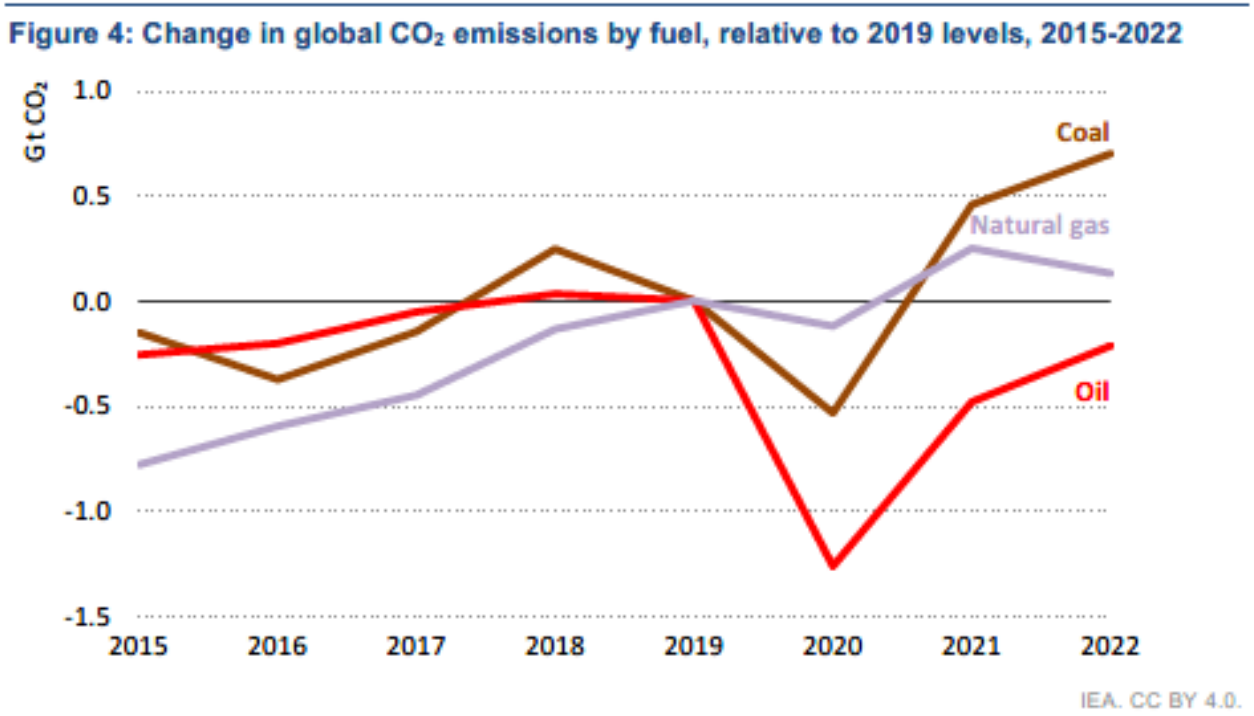
Global 2022 emissions were up by 0.9%

-China = flat

-EU = 2.5% reduction

-US = 0.8% up

-Asian (non-China) = 4.2% up



Source: IEA CO2 Emissions in 2022

Waters of the United States

- The Clean Water Rule, 80 Fed. Reg. 37054 (June 29, 2015)
  - Provided expansive definition of 'waters of the United States'
  - Challenged in numerous district / appellate courts
  - Led to a "patchwork" of regulation
    - 2015 Rule in effect in 22 states
    - Prior rule in effect in the other 28 states
- The Navigable Waters Protection Rule, 85 Fed. Reg. 22250 (April 21, 2020)
  - Patterned after Justice Scalia's opinion in *Rapanos*
  - WOTUS "encompass relatively permanent flowing and standing waterbodies that are traditional navigable waters in their own right or that have a specific surface water connection to traditional navigable waters, as well as wetlands that abut or are otherwise inseparably bound up with such relatively permanent waters"
  - Four categories of jurisdictional waters
    - The territorial seas and traditional navigable waters
    - Tributaries of such waters
    - Certain lakes, ponds, and impoundments of jurisdictional waters
    - Wetlands adjacent to other jurisdictional waters (other than jurisdictional wetlands)
  - Challenged in numerous district / appellate courts

Waters of the United States

- Executive Order 13990, Jan. 20, 2021
  - Required review all rules issued under Trump Administration

- EPA/Corps announced intention to revise WOTUS definition (June 9, 2021)
  - Two rulemakings contemplated:
    - A foundational rule to restore longstanding protections (i.e., restore the regulations in place for decades until 2015)
    - Anticipated second rule that builds on that regulatory foundation

- NWPR remanded / vacated by federal district court in Arizona (Aug. 30, 2021)
  - Halted implementation of the NWPR nationwide
  - Interpreting WOTUS consistent with the pre-2015 regulations until further notice
    Using Clean Water Act Jurisdiction Memo (Dec. 2, 2008)
  - Approved jurisdictional determinations
    Will not be reopened if not associated with a permit action
    Unless criteria for revision under Regulatory Guidance Letter 05-02 is met
  - Pending JDs - Will be completed under current interpretation
  - Permits and applications
    Prior permits - Will not be reopened unless Section 325.7 criteria are met
    Pending permit applications will be completed under current interpretation

Waters of the United States

Summary of Key Points

The agencies will assert jurisdiction over the following waters:

- **Traditional navigable waters**
- **Wetlands adjacent to traditional navigable waters**
- **Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months)**
- **Wetlands that directly abut such tributaries**

The agencies will decide jurisdiction over the following waters based on a fact-specific analysis to determine whether they have a significant nexus with a traditional navigable water:

- **Non-navigable tributaries that are not relatively permanent**
- **Wetlands adjacent to non-navigable tributaries that are not relatively permanent**
- **Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary**

The agencies generally will not assert jurisdiction over the following features:

- **Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow)**
- **Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water**

The agencies will apply the significant nexus standard as follows:

- **A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters**
- **Significant nexus includes consideration of hydrologic and ecologic factors**

Source: Clean Water Act Jurisdiction Memo (Dec. 2, 2008)

Waters of the United States

- 86 Fed Reg. 69372, December 7, 2021 - Proposed rule
  - To restore "waters [as] defined by the longstanding 1986 regulations"
  - With amendments to reflect "interpretation of the statutory limits on the scope of" WOTUS as "informed by Supreme Court case law"

- Revised Definition of "Waters of the United States," 88 Fed. Reg. 3004 (Jan. 18, 2023)

  - (a)(1): Traditional navigable waters (TNW), territorial seas, and all interstate waters including interstate wetlands
  - (a)(2): All impoundments of waters otherwise defined as WOTUS
  - (a)(3): Tributaries
  - (a)(4): Wetlands adjacent to certain waters (other than waters that are themselves wetlands)
  - (a)(5) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds

- Final rule effective on March 20, 2023

Waters of the United States

Types of Waters	Features	Examples of Waters Likely to Be Jurisdictional Under the Final Rule	Regulatory Text Paragraph
Traditional Navigable Waters	Large rivers and lakes that could be used in interstate or foreign commerce, as well as waterbodies affected by tides.	Mississippi River, Erie Canal, Great Lakes	(a)(1)
Territorial Seas	Territorial seas that extend three miles out to sea from the coast.	Atlantic Ocean, Pacific Ocean	(a)(1)
Interstate Waters	Includes waters like streams, lakes, or wetlands that cross or form part of state boundaries.	Lake Tahoe, portions of the Columbia River, portions of Savannah River	(a)(1)
Impoundments	Impounded bodies of water created in or from "waters of the United States," like reservoirs and beaver ponds.	Bear Gulch Reservoir in California	(a)(2)
Tributaries	Branches of creeks, streams, rivers, lakes, ponds, ditches, and impoundments that ultimately flow into traditional navigable waters, the territorial seas, interstate waters, or impoundments of jurisdictional waters. Tributaries are jurisdictional if they meet either the relatively permanent standard or significant nexus standard.	Wolftrap Run in Virginia, Puppy Creek in Arkansas	(a)(3)
Adjacent Wetlands	These wetlands can be next to, abutting, or near other jurisdictional waters or behind certain natural or constructed features. They are most often within a few hundred feet of jurisdictional waters. Adjacent wetlands are jurisdictional if they meet either the relatively permanent standard or the significant nexus standard, or where the wetland is adjacent to a traditional navigable water, the territorial seas, or an interstate water.	Parts of the Florida Everglades, Horicon Marsh in Wisconsin	(a)(4)
Additional Waters	These lakes, ponds, streams, or wetlands do not fit into the above categories. They are jurisdictional if they meet either the relatively permanent standard or the significant nexus standard.	Certain local lakes, streams, wetlands, etc.	(a)(5)

Source: EPA

Waters of the United States

Standards for Determining Jurisdiction

To determine jurisdiction for tributaries, adjacent wetlands, and additional waters, the final rule relies on the longstanding approach of applying two standards. Certain types of waters are jurisdictional under the final rule if they meet either the relatively permanent standard or significant nexus standard.

- **Relatively Permanent is a test that** provides important efficiencies and clarity for regulators and the public by readily identifying a subset of waters that will virtually always significantly affect paragraph (a)(1) waters. To meet the relatively permanent standard, the waterbodies must be relatively permanent, standing, or continuously flowing waters connected to paragraph (a)(1) waters or waters with a continuous surface connection to such relatively permanent waters or to paragraph (a)(1) waters.
- **Significant Nexus is a test that** clarifies if certain waterbodies, such as tributaries and wetlands, are subject to the Clean Water Act based on their connection to and effect on larger downstream waters that Congress fundamentally sought to protect. A significant nexus exists if the waterbody (alone or in combination) significantly affects the chemical, physical, or biological integrity of traditional navigable waters, the territorial seas, or interstate waters.

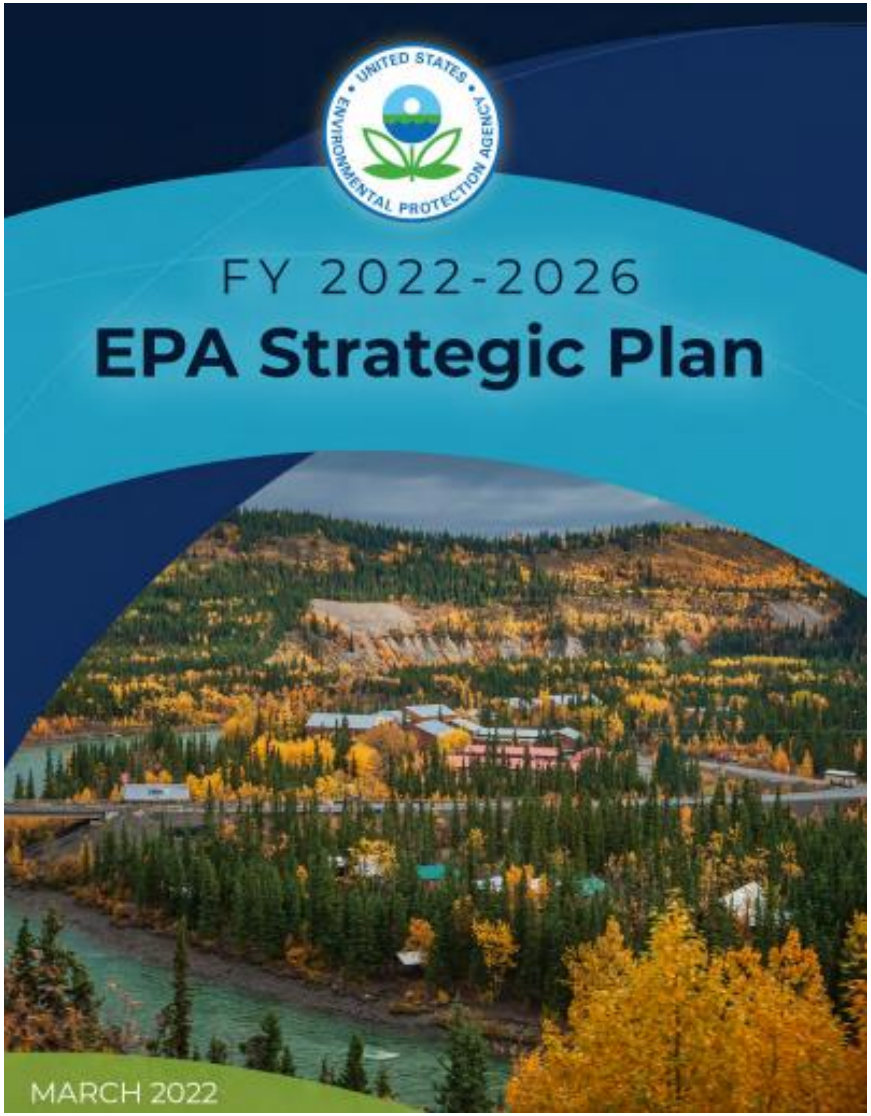
Source: EPA

Waters of the United States

- *Sackett v. EPA*, 8 4th 1075 (9 Cir. 2021)
  - Relates to a residential lot purchased in 2004
  - EPA issued a compliance order
    - Led to Supreme Court ruling that judicial review of the order was available
  - Sackett argued that Scalia's formulation was correct
  - Ninth Circuit applied Kennedy's 'significant nexus' test

- US Supreme Court agreed to review Ninth Circuit decision
  - Whether the U.S. Court of Appeals for the 9th Circuit set forth the proper test for determining whether wetlands are "waters of the United States" under the Clean Water Act, 33 U.S.C. § 1362(7).
  - Oral argument held on October 3, 2022

Environmental Justice



Environmental Justice

EPA Mission

To Protect Human Health and the Environment

Principles

Follow the Science
Follow the Law
Be Transparent
Advance Justice and Equity

Strategic Goals

Goal 1: Tackle the Climate Crisis

Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights

Goal 3: Enforce Environmental Laws and Ensure Compliance

Goal 4: Ensure Clean and Healthy Air for All Communities

Goal 5: Ensure Clean and Safe Water for All Communities

Goal 6: Safeguard and Revitalize Communities

Goal 7: Ensure Safety of Chemicals for People and the Environment

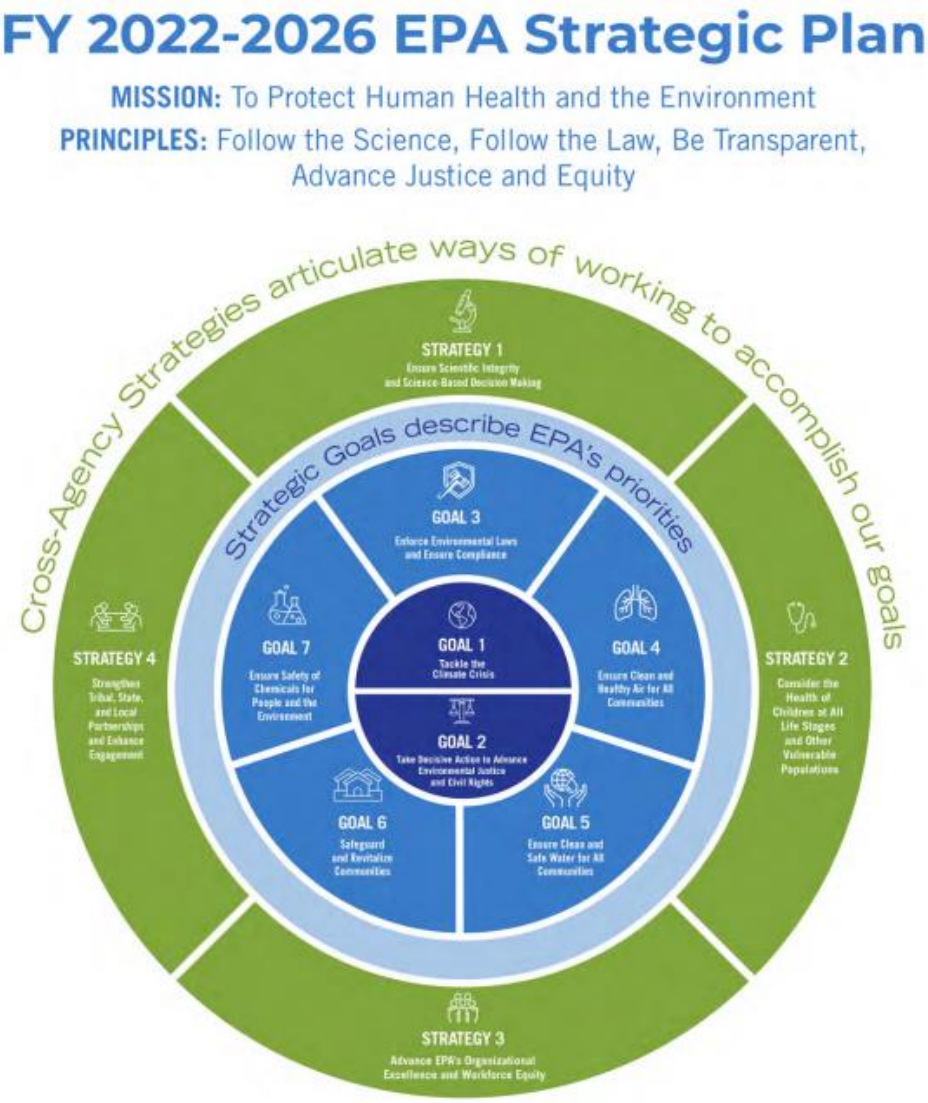
Cross-Agency Strategies

Strategy 1: Ensure Scientific Integrity and Science-Based Decision Making

Strategy 2: Consider the Health of Children at All Life Stages and Other Vulnerable Populations

Strategy 3: Advance EPA's Organizational Excellence and Workforce Equity

Strategy 4: Strengthen Tribal, State, and Local Partnerships and Enhance Engagement



Environmental Justice

Goal 2:
Take Decisive Action to Advance Environmental Justice and Civil Rights[23]

Achieve tangible progress for historically overburdened and underserved communities and ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in developing and implementing environmental laws, regulations, and policies.

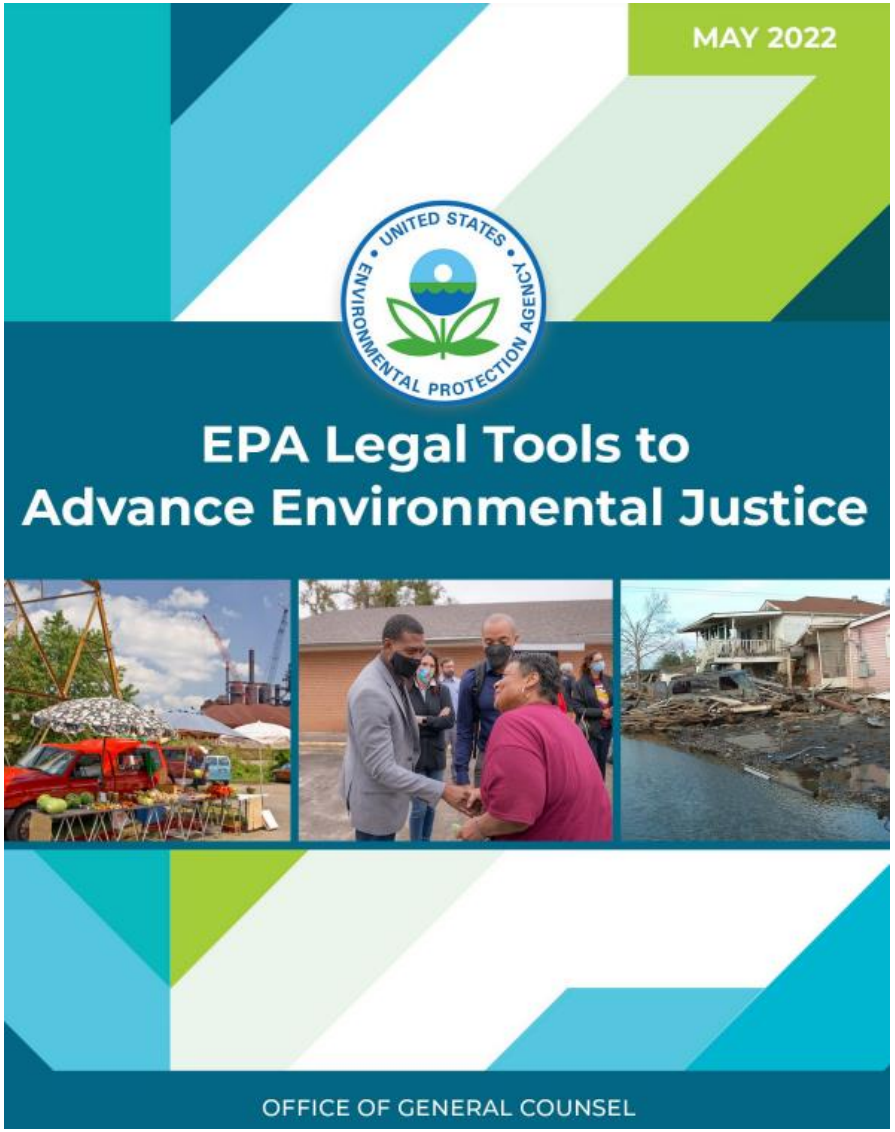
Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights

Objective 2.1: Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels

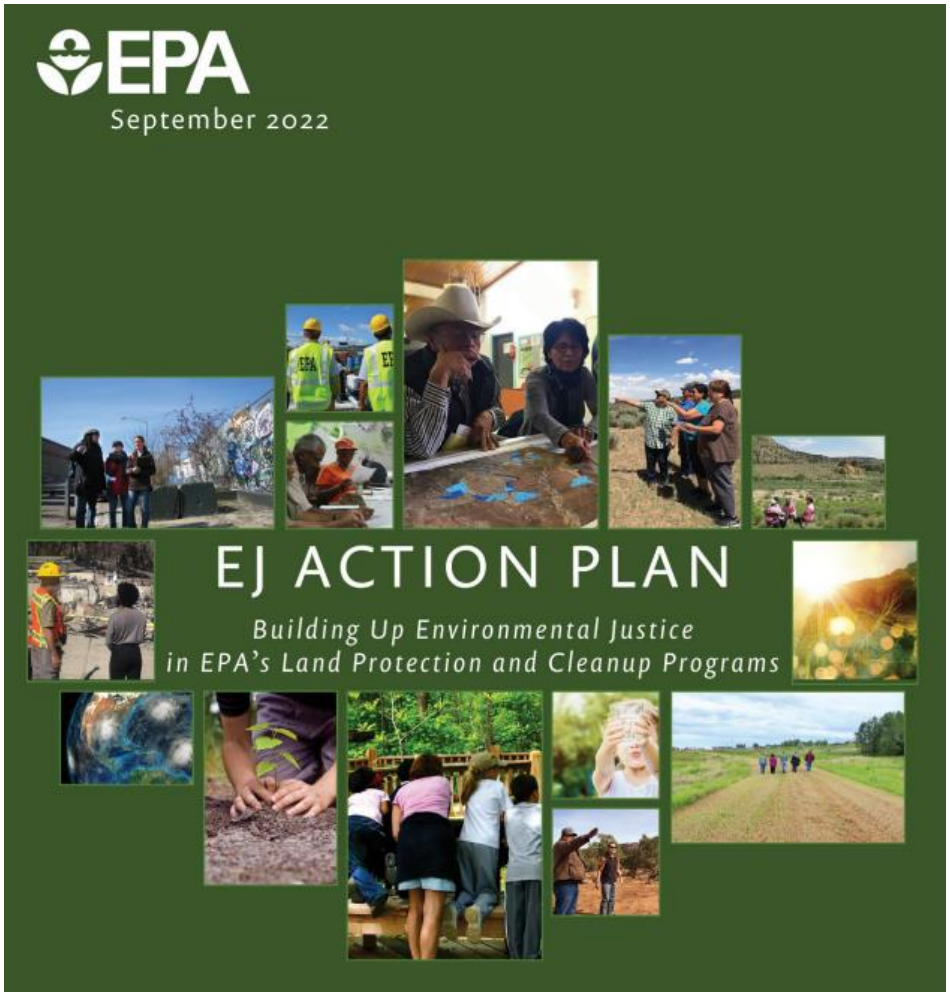
Objective 2.2: Embed Environmental Justice and Civil Rights into EPA's Programs, Policies, and Activities

Objective 2.3: Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns

Environmental Justice



Environmental Justice



Environmental Justice

1. Strengthen Compliance

EPA's Goal: *To strengthen compliance with cornerstone environmental statutes in communities overburdened by pollution.*

2. Incorporate Environmental Justice Considerations

EPA's Goal: *Take immediate and affirmative steps to incorporate environmental justice considerations into our work, including assessing impacts to pollution-burdened, underserved and tribal communities in regulatory development and to maximize benefits to communities.*

3. Improve Community Engagement

EPA's Goal: *Take immediate and affirmative steps to improve early and more frequent engagement with pollution-burdened and underserved communities affected by agency rulemakings, permitting decisions and policies. Following President Biden's memorandum on strengthening the nation-to-nation relationship with tribal nations, EPA staff should engage in regular, meaningful and robust consultation with tribal officials in the development of federal policies that have tribal implications.*

4. Justice40

EPA's Goal: *Consistent with the Administration's Justice40 initiative, consider and prioritize direct and indirect benefits to underserved communities in the development of requests for grant applications and in making grant award decisions, to the extent allowed by law.*

Environmental Justice

Environmental Protection Agency

Interim

Environmental Justice and Civil Rights in Permitting

Frequently Asked Questions

August 2022

Office of General Counsel
Office of Policy

Environmental Justice

13 **What if a Title VI disparate impact analysis by a permitting program concludes that the permit decision will have adverse disparate impacts on the basis of race, color, or national origin (including LEP status)?**

- If there are no mitigation measures the permitting authority can take, whether within or outside the permitting program, that can address the disparate impacts, and there is no legally sufficient justification for the disparate impacts, denial of the permit may be the only way to avoid a Title VI violation. Whether denial of a permit is required to avoid a Title VI violation is a fact-specific determination that would take into account an array of circumstances, including whether the facility will have an unjustified racially disproportionate impact, as well as the less discriminatory alternatives available.[38]

Environmental Justice

- EJ in Air Permitting - Principles for Addressing EJ Concerns in Air Permitting, Dec. 2022
  - Issued to EPA Air Division Directors
  - Provides an "interim operating framework" to address EJ in CAA context
  - Encourages sharing with States to facilitate application in their air permitting actions
- Framework
  - Identify communities with potential environmental justice concerns
  - Engage early in the permitting process to promote meaningful participation and fair treatment
  - Enhance public involvement throughout the permitting process
  - Conduct a "fit for purpose" environmental justice analysis
    -An evaluation of existing public health data about the affected community
    -An evaluation of the permitting action's non-health adverse effects (e.g., noise, odor, and traffic;
    -An evaluation of the cumulative impact of the permitting action under consideration together with impacts from other regulated and non-regulated sources of pollution in the community
    -An evaluation of the potential effects of the permitting action under consideration on the health of a population and the distribution of those effects within the population
  - Minimize and mitigate disproportionately high and adverse effects associated with the permit action to promote fair treatment
  - Provide federal support throughout the air permitting process
  - Enhance transparency throughout the air permitting process
  - Build capacity to enhance the consideration of environmental justice in the air permitting process

Compliance and Enforcement

- National Compliance and Enforcement Initiatives
  - 88 Fed. Reg. 2093 (January 12, 2023)
  - EPA seeking comments on NECIs for FY2024-2027

- Retaining these four initiatives
  - Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants
  - Reducing Risks of Accidental Releases at Industrial and Chemical Facilities
  - Reducing Significant Non-Compliance with NPDES Permits
  - Reducing Non-Compliance with Drinking Water Standards at Community Water Systems

- Returning these two to core programs
  - Stopping Aftermarket Defeat Devices for Vehicles and Engines
  - Reducing Hazardous Air Emissions from Hazardous Waste Facilities

- Adding two new NECIs
  - Mitigating climate change
  - Addressing PFAS contamination

- Considering two for possible development as NECIs
  - Reducing exposure to lead
  - Addressing coal combustion residuals

Questions and Comments?

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