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Texas Independent Producers and Royalty Owners Association

EPA modifies CWA Section 401 Certification rule, risking new opportunities to block key infrastructure and energy projects

The U.S. Environmental Protection Agency (EPA) this month issued a final rulemaking updating regulatory requirements for water quality certification under the Clean Water Act (CWA) Section 401. CWA Section 401 provides states and Tribes with a means to protect the quality of their waters from possible impacts resulting from federally licensed or permitted projects. Under CWA Section 401, a federal agency may not issue a license or permit to conduct any discharge into navigable waters, unless the state or Tribe where the discharge would originate either issues a CWA Section 401 water quality certification finding "that any such discharge will comply with the applicable provisions of Section 301, 302, 303, 306, and 307" of the CWA, or certification is waived, according to the government. The EPA's latest action on CWA Section 401 rolls back efforts by the previous administration that sought to make it easier to construct pipelines and other important energy infrastructure by modernizing and clarifying the timeline and scope of CWA Section 401 certification reviews.

Following a careful reconsideration of the water quality certification rule promulgated in 2020, the EPA last year published a proposed rule revising and replacing the agency's 2020 regulatory requirements for water quality certification under CWA Section 401. Through the rulemaking, the EPA is modifying existing regulations to be more consistent with the statutory text of the 1972 CWA; clarifying, reinforcing, and providing a measure of consistency with respect to elements of section 401 certification practice that have evolved over the 50 years since the 1971 rule was promulgated; and supporting an efficient and predictable certification process that is consistent with the water quality protection and cooperative federalism principles central to CWA Section 401. The EPA's CWA Section 401 regulatory update also follows an executive order that was signed by President Joe Biden on January 20, 2021, *"Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,"* which directed the agency to review the water quality certification rule EPA promulgated three years ago by the Trump Administration.

"With EPA's final CWA Section 401 rule, we are affirming the authority of states, territories, and Tribes to protect precious water resources while advancing federally permitted projects in a transparent, timely, and predictable way," stated EPA Administrator Michael Regan.

In a joint statement, U.S. House Transportation and Infrastructure Committee Chairman Sam Graves (R-Missouri) and Water Resources and Environment Subcommittee Chairman David Rouzer (R-North Carolina) cautioned that the EPA's final rulemaking on CWA Section 401 could open the door to further abuse of the CWA by activists working to block key infrastructure and energy projects. "The CWA Section 401 final rule is unfortunately just another example of the Biden Administration's hostility towards completing infrastructure projects," said members. "This new rule still allows for states to single-handedly torpedo crucial development of interstate energy and infrastructure projects for reasons unrelated to the CWA. If you want a solution to this problem, look no further than the House-passed H.R. 1, which contains a provision from our committee to ensure that CWA water quality standards are the focus of Section 401 reviews, and that bureaucratic activism isn't allowed to block infrastructure projects. Disappointingly, this rule does not properly address either."

The EPA's final rule on CWA Section 401 is expected to take effect in November. Meanwhile, the agency is holding a series of webinars regarding the changes to CWA Section 401 to enable broad participation by stakeholders. A webinar session for the public was held on Tuesday, September 26 – a recording of EPA's presentation is available for viewing at https://www.epa.gov/cwa-401.

EIA: U.S. oil and gas production forecasted to fall in October

Oil and natural gas output from the nation's top producing regions will continue to decline next month, forecasted the U.S. Energy Information Administration (EIA) in a recent production report. The EIA said oil production levels in primary oil and gas regions across the United States will fall by 40,000 barrels per day (bpd) in October, dipping to 9.393 million bpd. By comparison, this summer, oil production in the United States had topped 9.476 million bpd in July.

In the Permian Basin, the country's largest oil basin, production will drop to 5.773 million bpd, a decrease of 26,000 barrels daily, the steepest slump in output of anywhere in the nation, according to the EIA. Oil production in the Eagle Ford Shale in South Texas will also go down by 17,000 bpd to 1.109 million bpd, the formation's lowest output since last December.

Natural gas production in October will be lower, as well, than total output recorded from earlier months this year. The EIA estimates natural gas production to fall by approximately 0.3 billion cubic feet per day (bcfd) next month to 98.4 bcfd. Output of natural gas in the Permian Basin will see only modest growth of 0.11 bcf to reach 23.745 bcfd, while production of natural gas in the Eagle Ford will slip by 0.7 bcfd to 7.54 bcfd. As natural gas prices have crashed this year, many energy producers have decided to pull back on drilling activity and reduce the size of projects, contributing to the lower levels of U.S. natural gas production.

Chairman's message

Jud Walker

TIPRO members,

In spite of ongoing shifts in energy markets, a slowdown in drilling activity and the hostile federal regulatory climate targeting domestic oil and natural gas development, a recent analysis by TIPRO shows demand for talent across our industry has still remained robust and continues to grow. In the month of August, hiring by oil and gas companies picked up and the Texas upstream oil and natural gas sector added 1,200 jobs, with direct Texas upstream employment totaling 208,500 positions. Over the past year, upstream employment in our state has grown by 18,200 positions, including an increase of 2,300 jobs in oil and natural gas extraction and 15,900 jobs in the services sector.

The employment trends we are seeing so far this year for Texas' upstream industry are reassuring, as it is essential we keep up the oil and gas workforce to ensure Texas remains well-positioned to supply oil and natural gas with energy demands at home and abroad on the rise.

In order to maintain Texas' energy leadership and help our industry thrive, we must have the best and brightest workers who will continue to innovate and propel the energy business to achieve future growth. Accordingly, workforce training and development are paramount. Since becoming chairman of TIPRO, this has been a leading priority for me and something I know many other members of TIPRO care deeply about.

As I spoke about during TIPRO's Summer Conference last month, we are seeing a troubling trend in the number of students who are choosing to pursue a career in oil and gas. Petroleum engineering programs around the country have shrunk to their smallest size since before the shale revolution, for example. Young students appear to be concerned about the industry's role in climate change and long-term job security in relation to the transition to other energy sources. We must do our part to assure the next generation that there is a long-term need for workers across a broad range of jobs associated with the oil and natural gas industry – something that is not going to change in the next 10 to 20 years.

We have to remind incoming students that their skills are still very much valued in energy disciplines and also highlight the high-paying positions that are available to those employed by the industry. The average petroleum engineer graduate, for instance, earns 40 percent more than a peer with a computer science degree. This is something that is likely to resonate with ambitious students facing rising costs of living and higher expenses, driven up by inflation. In fact, a poll this past June by the CFA Institute showed 62 percent of Gen Z undergraduate students and graduates have said a "good salary" is a top priority when looking for an employer.

I've spoken to other industry executives about attracting and retaining the next generation of talent, and they also agree that we must continue to focus on recruiting smart, skilled young professionals to the oil and gas profession. For its part, TIPRO continues to engage with educational institutions and universities in Texas to help students learn about the oil and gas industry, meet oil and gas professionals through association events and promote opportunities to work for the Texas E&P sector. Our association also continues to invite students with majors in energy-related disciplines to enroll in TIPRO's 'Young Leaders in Energy' program which was established to support and engage the next generation of leaders within the Texas oil and natural gas industry. More details on the program can be found on the TIPRO website at www.tipro.org. Regards,

Jud Walker

Registration now open for the October 'Leaders in Industry' luncheon

Join the Texas Independent Producers & Royalty Owners Association (TIPRO), Independent Petroleum Association of America (IPAA) and Houston Producers Forum on Tuesday, October 17th for the monthly 'Leaders in Industry' luncheon. The event, hosted at the Petroleum Club of Houston, will feature commentary from guest presenter Colin Fenton, managing director of Blacklight Research.

Fenton is the managing partner and head of research at Blacklight Research LLC, a strategic adviser to senior leaders of corporations, institutional investment firms, and sovereign governments. He is also the co-chair of the advisory council for the J.P. Morgan Center for Commodities at the University of Colorado - Denver, a position he has held since the center's founding in April 2012. Fenton has also been a non-resident fellow at Columbia University's School of International and Public Affairs in the Center on Global Energy Policy (2015-2017). Prior to his current positions, Fenton was a managing director at J.P. Morgan Chase & Co., where he served as global head of commodities research and chief commodities strategist (2010-2015).

He is also the former managing partner of Curium Capital Advisors LLC, and was the managing director responsible for commodities and cyclical industries at Duquesne Capital Management LLC, Stanley Druckenmiller's hedge fund. Fenton is also a former chief intelligence officer of Ospraie Management LP, an investment firm specializing in natural resource investments across asset classes. He began his markets career at Goldman, Sachs & Co., where for seven years he helped build the Commodities Research franchise. Before joining Goldman, Fenton was the research assistant to Ambassador Chester A. Crocker, the former U.S. assistant secretary of state for African Affairs.

To see more information about the October 'Leaders' luncheon and to register to attend this event, click here.

TIPRO CALENDAR OF EVENTS

OCTOBER 17, 2023	NOVEMBER 28, 2023	JANUARY 16, 2024
HOUSTON — TIPRO/IPAA/HPF "Leaders in Industry" Luncheon. For information, email info@houstonproducersforum.org.	HOUSTON — TIPRO/IPAA/HPF "Leaders in Industry" Luncheon. For information, email info@houstonproducersforum.org.	HOUSTON — TIPRO/IPAA/HPF "Leaders in Industry" Luncheon. For information, email info@houstonproducersforum.org.

Ken Paxton returns to work as Texas attorney general following acquittal from impeachment trial

After a contentious impeachment trial of current Texas Attorney General Ken Paxton, the Texas Senate issued a verdict on Saturday, September 16, dismissing all articles of impeachment brought against Paxton which alleged corruption, bribery and abuse of office. Following the conclusion of the Senate trial, Governor Greg Abbott called for closure, saying in a statement, “the jury has spoken. Attorney General Paxton received a fair trial as required by the Texas Constitution. Attorney General Paxton has done an outstanding job representing Texas, especially pushing back against the Biden Administration. I look forward to continuing to work with him to secure the border and protect Texas from federal overreach."

Upon his reinstatement to office, Paxton said that the Office of the Attorney General has redoubled its focus on countless issues facing the state, including fighting for the rule of law against the Biden Administration’s executive overreach. “After we were disrupted by four months of wasteful and destructive political theater, we have much to do,” Paxton vowed.

Texas comptroller makes statewide tour highlighting Texas’ energy sectors

In September, Texas Comptroller Glenn Hegar has toured different energy sites and facilities around Texas as part of his rebooted *Good for Texas Tour*, spotlighting the importance of Texas’ energy sectors and the state’s leadership in energy production. As part of the tour, the comptroller is meeting with company officials and local community members to take a deep dive into Texas’ challenges and successes in energy generation, management and planning.

Comptroller Hegar earlier this month visited the Electric Reliability Council of Texas (ERCOT), which is the independent, nonprofit corporation that oversees the reliable transmission of electricity across the state. He also has made a stop at Quanta Services, a leading specialized contract service provider that works to create a skilled workforce to support the state's growing energy industry.

U.S. House speaker places blame on president for constricting America’s energy independence

During an interview this month on radio show WABC 770AM’s “Cats Roundtable,” Speaker of the U.S. House of Representatives Kevin McCarthy (CA-20) slammed President Joe Biden for his energy policy agenda that McCarthy condemned as having diminished America’s energy independence. Faulting the “horrendous decisions by Democrats and the Biden Administration” on energy, the speaker said policy actions from the executive branch were hurting America, especially by cutting off resources available in the United States that would allow the nation to be energy independent. Actions have raised the cost of fuel, explained McCarthy, which has contributed to inflation, forcing interest rates to go higher and leading to further economic hardship.

Speaking not only to the foundation of oil and gas to so many of the products utilized by Americans as well as means of transportation, McCarthy elaborated how greater domestic energy production would also benefit the environment. “If we replaced Russian natural gas in Europe, for one year, just one year, that would lower 215 million tons of emissions because our natural gas is 41 percent cleaner than Russian natural gas,” he argued.

Speaker McCarthy continued by acknowledging Americans aren’t buying less energy, in spite of the administration’s attacks on oil and natural gas, but rather, energy supplies are getting more expensive, forcing Americans to have to pay more for the energy which they rely on. He also criticized the president’s policies for forcing America to buy more energy “from our enemies” as producers in the U.S. are less capable of developing energy supplies due to the current regulatory environment. “It is a sad place, but it’s all from Democratic policies from this administration. Not just hurting America and our economy but helping our adversaries be stronger,” he said. “That is why we need an American energy policy, which the House has passed, that makes America energy independent, utilizing all forms of energy from renewable, from nuclear, from oil and natural gas as well,” the California Republican added.

Texas congressmen join amicus brief in case brought against Offshore Lease Sale 261

Before a federal court struck down the Biden Administration's last-minute restrictions on offshore oil and gas Lease Sale 261, U.S. Senator Ted Cruz (R-Texas) and U.S. Representatives Wesley Hunt (R-Texas), August Pfluger (R-Texas) joined Senate Committee on Energy and Natural Resources Ranking Member John Barrasso (R-Wyoming) and House Committee on Natural Resources Chairman Bruce Westerman (R-Arkansas), along with five other congressional leaders, in filing an amicus brief in mid-September in a case challenging the Bureau of Ocean Energy Management's (BOEM) decision to alter the terms of the offshore oil and gas drilling auction. The ten members of Congress requested the courts add their amicus brief in support of arguments presented by plaintiffs in a lawsuit brought by the state of Louisiana, Chevron U.S.A. Inc., Shell and the American Petroleum Institute (API).

In the legal filing, the members of Congress asserted that the BOEM’s actions undercut the separation of powers by not faithfully executing laws enacted by the legislative branch. "President Biden is crushing American energy every way he can," said Senator Barrasso. "He is inventing new and destructive ways to target oil and natural gas in our country. The Gulf of Mexico alone is responsible for 15 percent of total U.S. crude oil production. President Biden is strangling American energy in this region of the country with bureaucratic red tape. The Democrats’ mission to cut off American energy production will send energy prices even higher. President Biden is yet again prioritizing liberal extremism over affordable and reliable American energy."

"The price of oil hit a yearly high this week, yet President Biden and his administration seem completely blinded to reality as they prioritize their failed energy policies above all else," added Chairman Westerman. "They continue to implement regulations that will drive up costs for the American consumer by limiting companies' access to the Gulf of Mexico, one of the most resources-rich areas in the country. This is so-called 'Bidenomics' in action: shutting down our own sustainable, reliable energy production and leaving Americans to pick up the tab. It's unacceptable, and I look forward to seeing our judicial system step in to rectify these America-last policies."

TIPRO members may see the full amicus brief filed with the courts by the congress members here.

Court orders Gulf of Mexico oil and gas lease sale to be postponed, proceed without restrictions

A federal judge last week ruled against the Bureau of Ocean Energy Management (BOEM)'s plans for an oil and gas lease on the Outer Continental Shelf (OCS) in the Gulf of Mexico (Lease Sale 261). In compliance with the *Inflation Reduction Act of 2022*, the BOEM last month announced the government would conduct the lease sale on September 27, 2023. However, the bureau said it would be reducing the size of the lease sale by approximately 6 million productive acres to follow stipulations on oil and gas operations that the Interior Department had promised to follow in a settlement agreement with environmental organizations giving additional protections to the endangered Rice's whale, which lives in the Gulf of Mexico.

The state of Louisiana, Chevron U.S.A. Inc., Shell and the American Petroleum Institute (API) in late August filed a legal challenge fighting the BOEM's final notice of sale for Lease Sale 261, saying the Biden Administration was pursuing "illegal roadblocks and using unjustified actions" to further restrict American energy access in the Gulf of Mexico. A motion for preliminary injunction in the U.S. District Court Western District of Louisiana was also filed seeking immediate action from the court ahead of the planned Lease Sale 261.

On September 21, Judge James Cain of the Western District of Louisiana granted the preliminary injunction request from plaintiffs, forcing the BOEM to lift the restrictions on Lease Sale 261 and complete the offshore lease sale as directed by Congress. Though the Biden Administration asked the United States Court of Appeals for the Fifth Circuit in New Orleans to block the order from Judge Cain, in accordance with the court's ruling, the BOEM reinstated the lease blocks that were previously excluded from the offshore lease sale due to concerns regarding potential impacts to the Rice's whale distribution in the Gulf of Mexico. BOEM also removed portions of a related stipulation meant to address potential impacts to Rice's whale from the lease terms for the leases that may be issued as a result of Lease Sale 261.

"Congress is clear: lease sales must take place; so we are grateful the judge cut through the noise and upheld the law," commented Louisiana Attorney General Jeff Landry. "While our fight is far from over, I am pleased the court granted preliminary relief against the president's latest attack on reliable and affordable American energy."

Days later, the United States Court of Appeals for the Fifth Circuit issued a ruling on September 25, 2023, that gives the BOEM until November to hold Lease Sale 261, allowing additional time for a more orderly lease sale process. The September 25th court ruling stated that: "The preliminary injunction that was entered by the Memorandum Order of September 21, 2023, is hereby amended only in that the sale that was set for September 27, 2023, is ordered to take place by November 8, 2023. No extension will be granted." Following the court ruling, the BOEM said that it still expects to include lease blocks previously excluded and also will remove the portions of a related stipulation meant to address potential impacts to Rice's whales.

The BOEM said that it plans to hold Lease Sale 261 no later than November 8, 2023, to comply with the Appeals Court ruling. A revised Final Notice of Sale will be issued by the BOEM in the coming days.

For more information, see www.boem.gov/sale-261.

Group of House Democrats from Texas press Interior Dept. to resume offshore oil & gas leasing

Democratic lawmakers from the state of Texas are pushing administration officials to promptly resume uninterrupted offshore oil and gas lease sales under the pending 2023-2028 National Outer Continental Shelf (OCS) Oil and Gas Leasing Program. Texas Congressman Vicente Gonzales (TX-34) this month led a letter to U.S. Department of Interior Secretary Deb Haaland urging immediate action to bring back regular leasing auctions for oil and natural gas drilling offshore, citing the impact of ongoing leasing delays to American jobs, capital investment, the U.S. economy and even offshore wind development. Joining Congressman Gonzalez signing the letter were Congressmen Henry Cuellar (TX-28), Marc A. Veasey (TX-33) and Jim Costa (CA-21) along with Congresswomen Lizzie Fletcher (TX-07) and Mary Sattler Peltola (AK-AL).

Offshore oil and gas lease sales must be held in a timely manner, explained the legislators in their letter to Secretary Haaland, in order for the government to be able to continue issuing offshore wind leases. "As you know, the Inflation Reduction Act (IRA) requires the Bureau of Ocean Energy Management (BOEM) to offer a minimum of 60 million acres for offshore oil and gas leases annually in order to issue offshore wind leases the following year. We are concerned that ongoing delays in finalizing the five-year program, including delays to required lease sales specific National Environmental Policy Act (NEPA) analyses, will interrupt the issuance of offshore wind energy leases," wrote the representatives. "Action must be taken to finalize the 2023-2028 National OCS Oil and Gas Leasing Program with all 11 lease sales, complete all work necessary to conduct every Gulf of Mexico lease sale in the plan without delay, and continue with annual offshore wind lease sales in order to deploy the administration's goal of 30 gigawatts by 2030. "The lawmakers advised this should become a top priority for the Biden White House to ensure there will not be a significant gap in the issuance of offshore wind leases for the next several years, provided an absence of offshore oil and gas lease sales. TIPRO members may read the full letter here.

A year ago, Congressman Gonzalez made similar requests for action ensuring the maximum number of lease sales located in the Gulf of Mexico would be included in the Interior Department's OCS Oil and Gas Leasing Program for 2023-2028. In a letter to Secretary Haaland last October, Congressman Gonzalez and other members said to maintain its position as a world energy leader, the United States must continue to allow offshore development of oil and natural gas resources. "At a time when our nation is still suffering from high energy costs and inflation, tapping into our domestic natural resources is a significant way to help alleviate hardships on American families, workers, and businesses," said Congressman Gonzalez, who also drew attention to the fact that America is best positioned to produce energy in the least climate-intrusive manner. "By ending lease sales in the United States, we would likely experience an outcome where other nations' increased production actually hurts our progress toward a carbon-neutral world," resolved members. Despite such pleas by members of Congress, the administration has since only conducted offshore oil and gas lease sales mandated through congressional directives like the IRA.

Energy panel meets on Capitol Hill to examine Biden Administration's energy policies

Members of the U.S. House Natural Resources Subcommittee on Energy and Mineral Resources held an oversight hearing on Tuesday, September 19th examining the Biden Administration's actions that have impacted oil production on federal lands, which have jeopardized revenues to states, local and native communities, threatened good-paying jobs, risked national security and contributed to rising energy costs for Americans. “From canceling the Keystone XL Pipeline on his first day in office to withdrawing millions of acres of land from oil and gas development in Alaska just two weeks ago, President Biden is crushing American energy production in every way he possibly can. As a result, the American people are paying the price at the pump. While the president and some of my colleagues on the left want to take traditional fuels off the table, the reality is that energy demand is only growing, and we need to be embracing our vast energy wealth. Rather than remaining reliant on countries like Russia and Saudi Arabia, we must restore American energy independence by encouraging domestic oil and gas development,” said Subcommittee Chairman Pete Stauber (R-Minnesota). “Today’s subcommittee hearing produced a great discussion, and I was glad for the chance to highlight how this administration’s out of touch energy policies must change to meet the energy needs of the future.”

Testifying at the hearing was Bureau of Land Management (BLM) Deputy Director Michael Nedd, who reviewed the BLM’s oil and gas leasing program and spoke on the steps taken by the Biden Administration to modernize BLM’s oil and gas program through policy and regulation updates. In a second panel discussion before the subcommittee, Western Energy Alliance President Kathleen Sgamma, Wyoming County Commissioners Association President Bill Novotny, Western Organization of Resource Councils Citizen Scientist and Advocate Dr. Barbara Vasquez and Voice of the Arctic Iñupiat (“VOICE”) President Nagruk Harcharek also reviewed for legislators some of the emerging management issues from Biden Administration policies that have been impacting the nation’s onshore oil and gas program. To watch the full oversight hearing, go to: https://tinyurl.com/yeyk668v.

Federal legislation filed to retain Trump-era ESA regulations

Hoping to stop the Biden Administration from finalizing “restrictive’ regulatory changes to the Endangered Species Act (ESA), Republicans in Congress have filed a bill that seeks to retain existing ESA regulations first put into place by the Trump Administration in 2019. As announced this summer, the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) are considering making modifications to the ESA that include reinstating the “blanket rule” under Section 4(d) to automatically provide endangered level protections to a species listed only as threatened; changing critical habitat rules to mandate agencies to designate unoccupied areas as critical habitat and share information on the economic impact of a listing; and, eliminate clarifications on the interagency consultation process and standards ensuring that effects analysis for proposed actions is limited only to “activities that are reasonably certain to occur” and must be backed by “clear and substantial information.” With the new legislation, federal lawmakers say they want to prevent the “egregious” rules from taking effect and steer the ESA back to its intended purpose of helping species recover without being a barrier to prosperity for rural communities.”

“Abandoning clear and well-functioning Trump-era reforms in favor of a one-size-fits-all mandate from disconnected Washington bureaucrats underscores just how out of touch this administration is with western priorities,” said Senate Western Caucus Chair Cynthia Lummis (R-Wyoming), one of the bill’s leading supporters. “Our landowners and ranchers need certainty, not unnecessary regulatory headaches. This administration continues to tout confusing and less effective policies that ultimately hurt the west. The Biden administration needs to stop this big government exercise of forgoing a solution in search of a problem and stick with what is already working.”

“For far too long, radical environmental activists have weaponized the ESA against farmers, ranchers, landowners, and rural communities while recovering less than 5 percent of species listed over the last 50 years,” described Congressional Western Caucus Chair Dan Newhouse (R-Washington). “The proposed rules from Biden’s USFWS will only encourage further disruptions by activists and make it even more difficult for true conservationists to assist with species recovery.

The legislation in the Senate is cosponsored by U.S. Senators John Barrasso (R-Wyoming), Dan Sullivan (R-Arkansas), Roger Marshall (R-Kansas), Mike Crapo (R-Idaho), Jim Risch (R-Idaho), Roger Wicker (R-Mississippi), Pete Ricketts (R-Nebraska), Deb Fischer (R-Nebraska), Kevin Cramer (R-North Dakota), Steve Daines (R-Montana), Jerry Moran (R-Kansas), John Hoeven (R-North Dakota), Mike Rounds (R-South Dakota), James Lankford (R-Oklahoma), Mike Lee (R-Utah) and Ted Cruz (R-Texas). The house bill is cosponsored by U.S. Reps. Harriet Hageman (R-Wyoming), Jerry Carl (R-Alabama) and Lauren Boebert (R-Colorado). Click here to read the bill text.

U.S. lawmakers push back on proposed EPA air regulations, calling new standards “unattainable”

Over 20 U.S. senators have called for the U.S Environmental Protection Agency (EPA) to rescind its proposed primary annual fine particulate matter (PM2.5) National Ambient Air Quality Standards (NAAQS), warning that if the regulations in development by the EPA are implemented, unworkable mandates and greater costs would be imposed on America’s energy producers and manufacturers. Lawmakers also caution the EPA rules could ultimately contribute to higher prices for American consumers.

In a September letter to EPA Administrator Michael Regan, the senators outlined concerns with the EPA’s discretionary proposal to revise the PM2.5 standard by lowering the accepted level from 12 µg/m3 to between 9-10 µg/m3, an up to 25-percent reduction. “The EPA’s proposal fails to consider several important factors that will make implementation of a lower annual standard extremely difficult, or in some cases impossible, to no measurable benefits to public health, the environment, or the economy. The EPA should not finalize a discretionary reconsideration of a PM2.5 NAAQS that is unattainable and will likely lack an accompanying, detailed implementation plan,” said the senators.

Members in their outreach to Administrator Regan also pointed to progress that’s been made to improve air quality in the United States, backing their argument that the EPA proposal is nonessential at this time. “According to the World Health Organization our nation enjoys some of the cleanest air in the world. The EPA’s own figures report that direct emissions of PM2.5 are down 40 percent from 1990 levels and annual ambient PM2.5 concentrations have decreased 43 percent between 2000 and 2019,” cited the senators.

Co-signers of the letter to Administrator Regan include, U.S. Senators Ted Cruz (R-Texas), Shelley Moore Capito (R-West Virginia), John Hoeven (R-North Dakota), John Barrasso (R-Wyoming), John Boozman (R-Arkansas), Mike Braun (R-Indiana), Katie Britt (R-Alabama), Tom Cotton (R-Arkansas), Kevin Cramer (R-North Dakota), Mike Crapo (R-Idaho), Steve Daines (R-Montana), Deb Fischer (R-Nebraska), Lindsey Graham (R-South Carolina), James Lankford (R-Oklahoma), Cynthia Lummis (R-Wyoming), Roger Marshall (R-Kansas), Markwayne Mullin (R-Oklahoma), Pete Ricketts (R-Nebraska), Jim Risch (R-Idaho), Dan Sullivan (R-Alaska), JD Vance (R-Ohio), Roger Wicker (R-Mississippi), and Todd Young (R-Indiana).

The full text of the letter can be read here.

White House sets new mandate for federal offices to consider “social cost of carbon” metric

The Biden Administration announced in mid-September the president has approved recommendations expanding use of the social cost of greenhouse gases (SC-GHG) metric for budgeting, procurement and other decisions by federal agencies, including reaffirming its use for environmental reviews where appropriate. The accounting metric, which is used to measure in dollars the long-term damage done by a ton of carbon dioxide (CO_2) emissions in a given year, is now valued at $51 per ton of carbon. More extensive use of the SC-GHG calculation across the government could reshape regulatory and procurement decisions by federal agencies and departments in the future.

“The Biden Administration continues to use unproven figures to attempt to justify its environmental policies that drive up costs for families, hamstring American employers, and delay job-creating infrastructure projects from ever moving forward. Today’s announcement is more of the same devastating, top-down government mandates intended to kill energy jobs and make the United States more reliant on foreign countries,” U.S. Senator Shelley Moore Capito (R-West Virginia), ranking member of the U.S. Senate Environment and Public Works (EPW) Committee, said in a statement. “The problem is the math doesn’t add up, and in fact, doesn’t exist. I’ve asked the administration repeatedly for details, proof points, and facts on where its ‘social cost of greenhouse gases’ numbers come from and how they’re using them, and they’ve chosen to move forward anyway with overreaching, broad directives with no regard for transparency, public input, or impacts on millions of Americans.”

Congressional Democrats, meanwhile, lauded the Biden Administration’s recent decision to begin requiring broader use of the social cost of carbon across government decision-making. “This is a very big deal. The Biden Administration’s decision will put the full weight of federal government decisions into fighting climate change – a solution I’ve been encouraging for many years,” said U.S. Senator Sheldon Whitehouse (D-Rhode Island), a leading advocate in Congress for a government-wide social cost of carbon. Likewise, U.S. Senator Jeff Merkley (D-Oregon) called the administration’s action to include the social cost of carbon in more government decision-making “the right move.”

Meanwhile, states have already mounted legal fights against the president’s SC-GHG policy, calling it another instance of unauthorized executive overreach by President Biden that could cause economic harm and illegally force a destructive cost-benefit analysis on nearly every meaningful federal action. Despite such assertions, last October, a U.S. appeals court upheld the "social cost of carbon" calculation being used by President Biden's Administration. This past April, a federal appeals court also dismissed a lawsuit that Louisiana and other states, including Texas, filed that challenged the figures the Biden Administration uses to calculate damages from greenhouse gases, finding that the challenging states had no standing to sue because they had not shown that the regulations caused the economic harms their lawsuit cited.

With the latest directive from the Biden White House making more extensive use of the social cost of carbon across government decision-making, the calculation could again face legal challenges in the future.

Otherwise, efforts have been made by Republicans in the legislative branch to prevent federal agencies from using the SC-GHG metric and cost analyses. Last year, a coalition of Republican senators and representatives, including U.S. Senator John Cornyn (R-Texas), introduced the *Transparency and Honesty in Energy Regulations Act of 2022*, a bill to prohibit the federal government from using the “flawed” social cost of carbon, social cost of methane, social cost of nitrous oxide, or the social cost of any other greenhouse gas metrics in the rulemaking process. Bill authors declared the act would help take important steps to halt the metric from being used by federal regulators since it goes beyond the scope of regulatory authority permitted by Congress and as such should not be used to justify overreaching government rules.

House bill seeks to preserve American choice on vehicle purchases

The U.S. House of Representatives voted last week to pass H.R. 1435, the *Preserving Choice in Vehicle Purchases Act*, a bill that would amend the Clean Air Act to prevent the elimination of the sale of vehicles with internal combustion engines. The legislation, authored by U.S. Representatives John Joyce (R-Pennsylvania) and Bob Latta (R-Ohio), passed by a vote of 222-190. The bill now moves to the Senate for consideration.

Representative Joyce said, “The last thing my constituents want is another oppressive Biden Administration mandate that puts a radical environmental agenda and far-left special interests above their individual freedoms. There is nothing more quintessentially American than the freedom of the open road, and I’m grateful to my colleagues for supporting this important legislation protecting the freedom of all Americans to drive the vehicles of their choice.” Congressman Latta added, “Americans should be able to make choices – and vehicle purchases – that work best for themselves and their families.”

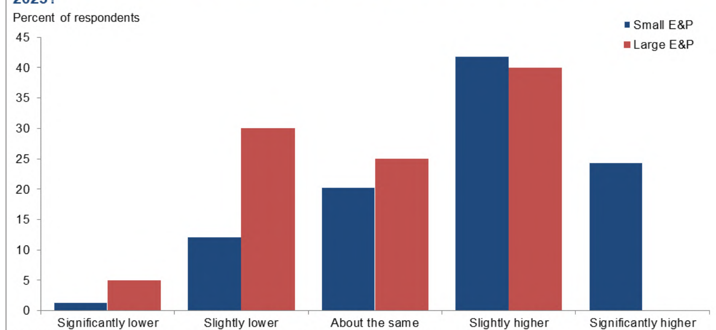
The White House has expressed strong opposition to the bill, arguing the legislation would restrict state authority to address unique and ongoing air quality challenges and prevent the ability of states to adopt innovative clean car and truck technologies.

Producers bracing for drilling costs to increase next year – Dallas Fed

Oil and gas executives responding to the latest energy survey by the Federal Reserve Bank of Dallas expressed concerns over mounting drilling and completion expenses. Approximately 60 percent of executives polled earlier this month by the Dallas Fed said they expect drilling and completion costs per well in 2024 to be higher than in 2023. Executives from small E&P firms were more likely to expect an increase in costs per well in the coming year than those from large E&P firms, noted the Dallas Fed.

In the new survey, a majority of E&P executives, 84 percent, also said they expect the number of U.S. oil rigs six months from now to be near current levels. Fourteen percent note they anticipate the number of U.S. oil rigs drilling six months from now to be much higher, while only 1 percent of executives said they expect it to be much lower.

What are your expectations for your firm’s drilling and completion cost per well in 2024 versus 2023?



NOTES: Executives from 94 exploration and production firms answered this question during the survey collection period, Sept. 13–21, 2023. Small exploration and production (E&P) firms produced fewer than 10,000 barrels per day (b/d) in fourth quarter 2022, while large E&P firms produced 10,000 b/d or more. Responses came from 74 small firms and 20 large firms.
SOURCE: Federal Reserve Bank of Dallas.

Data for the Dallas Fed’s energy survey was collected on September 13–21, and 147 energy firms responded. Of the respondents, 98 were exploration and production firms and 49 were oilfield service firms.

Texans for Natural Gas: The Permian Basin is paving the way for water management

The oil and gas sector has undergone significant advancements in water management practices, particularly in the prolific Permian Basin, the largest oil and gas producing region in the United States. As demand for energy continues to rise, understanding the industry's commitment to sustainable water management and resource preservation is crucial.

While oil and gas production in Texas uses water as part of the extraction process—which, as part of mining activities for the state, accounts for approximately 2 percent of total water consumption—a popular misperception is that it is the most water-intensive sector in the economy. However, other industries in the state, such as agriculture and the manufacturing industries, utilize even more water for its processes. In New Mexico, like in Texas, the most water-intensive businesses are closely related to the agricultural industry, which uses more than 80 percent of the state's fresh water resources.

However, in response to increased water demand and an increased focus on environmental impact, the Permian Basin's oil and gas industry has taken a proactive approach to water management. Reusing and recycling produced water has become common practice in recent years, and currently 78 percent of produced water in the Permian Basin is reused by operators, reducing the use of freshwater supplies.

Last year, the Texas Produced Water Consortium (TPWC) reported to Texas legislators that an estimated 14 million barrels of produced water a day are coming from both the Delaware and Midland basins, and of which 11 million barrels is reused by the industry. In addition, there are a variety of other potential re-uses for produced water and wastewater including fire control, power generation, vehicle and equipment washing, non-edible crop irrigation and carbon capture.

Some major players are leading the industry in sustainable water management in the industry. Apache, for instance, is developing flow-back and produced water treatment processes and facilities, reducing the company’s needs for freshwater for operations and cutting down associated truck traffic in the Permian Basin. Ovintiv also works diligently to conserve freshwater, using 100 percent recycled water for all completions operations in Midland and Martin Counties in 2022. Through ongoing efforts to expand water reuse infrastructure, EOG Resources sourced 46 percent of the water used in the company's operations last year from reused water, up from 34 percent in 2019. Finally, ExxonMobil in 2021 implemented a comprehensive water management roadmap for the next decade of Permian development, identifying site-specific strategies to manage water-related risks and increase the availability and quality of water in the region. As a result of these efforts, ExxonMobil utilizes only recycled or brackish water sources for their Permian hydraulic fracturing operations.

These collective efforts highlight the industry's dedication to protecting the community and the environment. While fracking is a water-intensive process, the widespread adoption of reusing and recycling produced water is and will continue to reduce the industry’s consumption of freshwater resources. The Permian Basin's dedication to responsible water management serves as an example for all industries, demonstrating that resource conservation and innovation can pave the way to a more sustainable future.

Texas Independent Producers & Royalty Owners Association

With nearly 3,000 members, TIPRO is the nation's largest statewide association representing both independent producers and royalty owners. Our members include small family-owned companies, the largest publicly traded independents and large and small mineral estates and trusts.

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