

Read-Ahead Materials

September 15, 2020



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Read-ahead for the Energy, Clean Air, and Natural Resources Issues

Endangered Species Act Reform

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Please contact Christopher Guith

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Presidential Executive Order on Electric Sector Supply Chain

On May 1, 2020, the White House issued an [executive order](#) (EO) which seeks to limit the suppliers of electric grid equipment and essentially prohibits the purchase and use of such equipment from countries deemed adversarial to domestic grid security. The Chamber has been engaged with its electric utility and impacted supply chain members, along with the Edison Electric Institute (EEI), since this order’s issuance, and has developed a Principles document working with the Chamber’s supply chain membership to guide interactions with the Department of Energy (DOE) and the Administration. On July 8, 2020, DOE issued and had published in the Federal Register a [Request for Information \(RFI\)](#) seeking information to assist DOE’s understanding of the current practices employed by the energy industry to identify and mitigate vulnerabilities in supply chain components for the bulk-power system, and also requested assistance in understanding the one-time and recurring costs of developing plans responsive to and compliant with the EO. On August 24, 2020, the Chamber submitted comprehensive [comments](#) responsive to the RFI. **Please contact**

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Recently, the Chamber worked with partner organizations to successfully ensure incorporation of the bipartisan Nuclear Energy Leadership Act (S. 903) in the FY2021 National Defense Authorization Act (NDAA). In addition to a [letter](#) to Senate leaders calling for this action, the Chamber joined 42 organizations in a [coalition letter](#) calling for the same. While efforts to secure support for a similar amendment in the House NDAA were unsuccessful, the Chamber plans to continue efforts to ensure that NELA remains in the final NDAA package later this year. The Chamber recently led a [letter](#) to House leadership, with nearly 40 trade group and association signatures, urging the advancement of an energy innovation package in that chamber. Since the issuance of that letter, House leadership has announced its intention to bring an energy innovation “package” of bills up for floor consideration the week of September 21, 2020. Meanwhile, on September 10th, Senate moved to resumed consideration of S. 2657, the American Energy Innovation Act, a comprehensive package of Chamber-supported bills that stalled upon initial floor consideration in March 2020. **Please contact** Redacted - PII
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Dakota Access Pipeline

In response to recent rulings by the U.S. District Court for the District of Columbia requiring the shut down and completion of an environmental review of the Dakota Access pipeline (DAPL), on Monday, July 13 the U.S. Chamber and allied organizations jointly filed an amicus brief at the U.S. Court of Appeals for the D.C. Circuit in support of DAPL's emergency motion to stay the district court's shut down order. The U.S. filed its own appeal and emergency motion for a stay that same day. On Tuesday, July 14, the D.C. Circuit issued an order administratively staying the decision to shut down the pipeline while the Court considers DAPL and the Government's motions. On Wednesday, August 5th, the D.C. Circuit made permanent its ruling that the pipeline could continue operating while the appeals court hears arguments on the underlying case. The court further decided to expedite the briefing schedule on the government's appeal on the merits. On September 2, 2020 U.S. Chamber and industry groups submitted amicus brief urging the D.C. Circuit to reverse lower court decision. **Please contact** [Redacted - PII] **with any questions.**

Migratory Bird Treaty Act

The Chamber continues to monitor developments from the Department of the Interior regarding reforms to the Migratory Bird Treaty Act ("MBTA"). In October, the Chamber joined other trade associations for a meeting with the Office of Management and Budget in support of a forthcoming proposal that would codify DOI's interpretation that the MBTA does not prohibit the incidental take of Migratory Birds. Additionally, legislation is expected to be introduced in the House that would create a permit program for regulated industries under the MBTA. **Please contact Christopher Guith** [Redacted - PII] **with any questions.**

Nationwide Permit Program

On Monday, August 3rd, the Army Corps of Engineers released its draft [reauthorization rule](#) and proposed updates to the Clean Water Act Nationwide Permit (NWP) program. The NWP program must be reauthorized by 2022. Among other changes, the draft rule proposes separating NWP-12 into three NWPS, with NWP-12 covering only oil and gas pipelines. Two new NWPs would authorize activities associated with electric utility lines/telecommunication lines and utility lines that convey water, sewage, and other substances. Absent are industry recommendation to address Endangered Species Act (ESA) consultation concerns raised in the Montana Federal District Court ruling vacating NWP-12 for the Keystone XL pipeline. There will be a 60-day public comment period

once the draft is published in the Federal Register. **Please contact** [Redacted - PII]
[Redacted - PII] **with any questions.**

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy — energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others – to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

Following the July 15th issuance of CEQ's final rulemaking, four lawsuits have been filed by environmental groups challenging the NEPA final rulemaking. Three lawsuits have been filed by environmental groups in different federal courts including the Western District of Virginia, Northern District of California, and Southern District of New York. One lawsuit has been filed by state attorneys general in the Northern District of California. The Chamber is currently collaborating with other trade associations on the best way to provide legal support for the NEPA updates.

In response to the lawsuits, the U.S. Chamber of Commerce, along with eight other associations, intervened in the Western District of Virginia case to support the NEPA regulatory updates. The first hearing regarding in that case was held on September 4th. Environmental groups had moved for a preliminary injunction to block the rule's implementation before it becomes effective on September 14th. The Chamber opposed the motion and provided oral argument supporting denial. We further filed a motion to dismiss. On September 11, 2020, the court issued an order denying the motion for a preliminary injunction, holding that the environmental groups had failed to establish they are likely to succeed on the merits. The court has not yet ruled on our motion to dismiss, which will determine next steps. The Chamber and its partners are also planning to request intervention in the other challenges to the new NEPA regulations.

Please contact [Redacted - PII] **with any questions.**

FAST-41 Reauthorization

GEI has pulled together a broad coalition of trade associations to support the reauthorization of Title 41 of the Fixing America's Surface Transportation Act (FAST Act). The FAST Act, and specifically Title 41, which created the Federal Permitting Improvements Steering Councils (FPISC) and permitting dashboard, has been tremendously helpful at increasing the efficiency of the federal government's permitting process for critical infrastructure. The FAST-41 component will sunset at the end of 2021 potentially leaving \$58.5 billion in critical infrastructure projects vulnerable to delays. We'll be actively promoting the reauthorization of FAST-41 in upcoming legislation. **Please contact** [Redacted - PII] **with any questions.**

DFC Nuclear Policy Change

On June 10th, the International Development Finance Corporation (DFC) announced a change in its policy, rescinding its ban on financing nuclear project. For two years, the Chamber has worked with DFC and its predecessor, OPIC, to change its near-sighted policy and released a [statement](#) supporting this important change. **Please contact Christopher Guith** Redacted - PII **with any questions.**

New York Section 126 Petition

On October 29, 2019, the State of New York, the State of New Jersey, and the City of New York filed a petition for review with the Court of Appeals for the D.C. Circuit challenging the EPA's denial of New York's "good neighbor" petition under Section 126 of the Clean Air Act. The Chamber has led a coalition of trade associations and companies, identified as the Air Stewardship Coalition (ASC), that intervened in this case and filed a brief on March 5, 2020, supporting the EPA's denial of New York's petition targeted at nearly 350 facilities across 9 states. On July 14, 2020, the Court of Appeals for the D.C. Circuit issued its [decision that](#) rejects EPA's bases for denying New York's Section 126 petition and remanded the dispute back to EPA for action consistent with the decision. The D.C. Circuit's opinion rested on its determination that EPA failed to rationally explain the allocation of the burden to support the imposition of additional pollution controls on the targeted sources. Importantly, the Chamber's brief had provided and argued additional grounds for rejecting New York's petition, but EPA did not adopt them. The majority of the three-judge panel acknowledged our arguments but did not consider them because EPA did not rely on them. In a helpful concurring opinion, Judge Griffith adopted our argument regarding the appropriate scope of a petition under Section 126 to an actual "source or group of sources," and suggested that EPA could rely on the section's more limited scope in a future case. The Chamber is working with its partners in the ASC to encourage the EPA to promptly deny New York's petition on remand, justified on the ASC's prior modeling efforts and the expansive nature of the "group" of sources targeted by New York's petition. **Please contact**

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with any questions.

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

In September 2018, EPA announced a major rulemaking to modify fuel economy and greenhouse gas standards for light duty vehicles (cars, SUVs, and trucks). The proposal rescinded California's special Clean Air Act waiver to set more stringent standards than the federal government and proposed to freeze fuel economy requirements beginning in model year 2021. In response, the Global Energy Institute published a report, "Divided Highway," that called for preservation of a single national auto market, and a middle ground compromise the Trump Administration proposal and the Obama-era standards.

In October 2019, the Administration finalized rescission of California's CAA waiver, and on March 31st, EPA and the Department of Transportation finalized the revised standards, which require 1.5 percent year-over-year increases in fuel economy through model year 2026. GEI President Marty Durbin released a [statement](#) commending the agencies for striking a balanced approach in the final rule. Litigation is now underway in

both rulemakings. ***Please contact*** Redacted - PII ***with any questions.***

Read-ahead for the Environment & Agriculture Issues

Great American Outdoors Act

The Great American Outdoors Act was signed by the president on August 4, 2020. The new law will help address our national parks operations and maintenance backlog and permanently fund the Land and Water Conservation Fund, building modern, resilient infrastructure and ensuring job creation and economic growth throughout our communities. The Chamber, the National Audubon Society, and the Pew Charitable Trusts issued a joint [statement](#). **Please contact Christopher Guith** Redacted - PII **with any questions.**

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hardrock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. Finalization of these rulemakings is anticipated in the coming months. **Please contact** Redacted - PII **with any questions.**

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. The Chamber is also working independently

and with other stakeholders to inform potential forthcoming guidance from EPA on its intended implementation of the “functional equivalent” test. Most recently, on September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

HFC Phasedown Legislation

In lieu of a proposed hearing, the Senate Committee on Environment and Public Works (EPW) had a call for information on the American Innovation and Manufacturing (AIM) Act. The Chamber provided [comments outlining our support for the legislation and identifying key priorities and challenges, including the potential job growth at no cost to the taxpayer](#). The Committee sent questions for the record on which we offered responses, provided on April 29, 2020. EPW majority and minority have agreed to compromise language that will likely be considered on the Senate floor during this week’s climate and energy innovation package debate. The Chamber, working with coalition of stakeholders, is sending a letter thanking EPW leaders for the important work and urging passage. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Chamber is working with the American Chemistry Council, the Plastics Industry Association, and member companies to engage members of the House and Senate to address outstanding issues and [pass the Save Our Seas 2.0 Act of 2019 before the end of the year](#). **Please contact** [Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

EPA is advancing rulemakings on the current National Ambient Air Quality Standards (NAAQS) for both ozone and particulate matter, which are required by the Clean Air Act every five years. EPA published its proposal to retain the existing PM and Ozone standards on April 30, 2020 and August 14, 2020, respectively. The Chamber testified at the EPA PM NAAQS public hearing supporting EPA’s retention of the current standards and submitted more detailed [coalition comments](#) on the proposal. A similar sequence is underway regarding the Ozone NAAQS. On August 14th, EPA issued a rulemaking proposing to retain the current Ozone standards at its 2015 level of 70 parts per billion, requesting comment on the proposal by October 1, 2020. The Chamber issued a [statement](#) on the ozone proposal, testified at EPA’s public hearing on September 1st, and is working with a coalition in the preparation of formal public comments on the ozone rule. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

EPA PFAS Interim Guidance. On July 27, 2020, EPA submitted for OMB review [interim guidance on PFAS waste disposal and destruction](#). EPA prepared the guidance

in response to an amendment to the FY2020 National Defense Authorization Act that requires EPA to issue interim guidance on disposal and destruction of PFAS materials and update it every three years. The Chamber held a virtual meeting with OMB and EPA on September 9, 2020, in which the timeline for finalizing was raised. There will be a 30 day comment period once OMB concludes its review. The NDAA requires that the guidance is completed by the end of the year. . **Please contact** [Redacted - PII]

[Redacted - PII] **with questions or to get engaged.**

The [Toxics in Packaging Clearinghouse](#), formed in 1992 to promote the Model Toxics in Packaging Legislation, has a [request for comments](#) out on revising their model legislation, including potential restrictions on PFAS. Please provide your feedback as soon as possible on whether the Chamber provided comments on August 24, 2020.

The Chamber and the coalition recently sent letters opposing amendments and language proposed in the FY 21 National Defense Authorization Act in both the House and Senate and will be urging that the provisions not be included in the final NDAA package. **Please contact** [Redacted - PII] **or** [Redacted - PII]

[Redacted - PII] **with any questions.**

Resilience Revolving Loan Fund

The Senate will likely hotline the of the Senate companion to the Resilience Revolving Loan Fund Act sometime during the week of September 14, 2020. The bill would establish a resilience revolving loan fund, similar to the drinking water SRF that would offer low interest loans to communities to better prepare them for a wide range of possible disasters, including droughts. The Chamber is sending a coalition letter urging immediate action. . The Chamber also developed [resilience principles](#) to guide how to advocate for building modern, resilient infrastructure policies and used them to evaluate the Invest in America Act, reauthorizing federal surface transportation programs, H.R. 2, the broader House Democratic infrastructure package, and the recent report from the House Select Committee on the Climate Crisis. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

TSCA Risk Management

On September 8th, EPA [announced](#) a series of meetings and stakeholder engagement opportunities related to forthcoming risk management actions under the revised Toxic Substances and Control Act (TSCA). This effort follows a recently filed petition by a coalition of trade groups including the Chamber requesting that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. The Chamber expects to be an active participant in the EPA engagement on this issue, and welcomes member input on the issue. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Stormwater Innovation Principles

The Chamber and the coalition held a meeting with the EPA stormwater and NPDES permitting teams on August 20, 2020 to discuss collaboration opportunities. **Please contact** [Redacted - PII] **with any questions.**

Water Infrastructure and Policy Priorities

The Chamber sent a **letter** to all Members of Congress urging passage of the Water Resources Development Act before it expires on September 30, 2020 and to include our water policy priorities in infrastructure legislation. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber is joining a coalition to the Senate Committee on Environment and Public Works providing recommendations on the implementation of the rule.

EPA Scientific Transparency

On May 18, 2020, the Chamber [filed comments](#) responding to EPA’s [supplemental proposal](#) modifying its 2018 proposed regulation aimed at increasing the transparency of scientific data and information used in regulatory decision-making. **Please contact** [Redacted - PII] **with any questions.**

EPA Cost-Benefit Analysis

On June 4, 2020, EPA proposed a rule to reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. The rule was published in the federal register and EPA is accepting comments until August 3rd. In response to the proposal, GEI issued this statement, presented [testimony](#) at the agency's public hearing on the rule, launched an advocacy [webpage](#). The Chamber submitted [coalition comments](#) in conjunction with several other trades for the August 3rd deadline. EPA’s Science Advisory Board has an upcoming meeting on September 15th to discuss the proposed rule and provide advice to the Administrator for consideration in the final rulemaking. EPA has indicated in their regulatory agenda that they plan to issue the final rulemaking in November 2020. **Please contact** [Redacted - PII] [Redacted - PII] **or** [Redacted - PII] **with any questions.**

EPA’s COVID Enforcement Guidance and Guidance Portal – On August 31, 2020, EPA terminated their COVID enforcement discretion guidance that the agency had

issued in March to provide the agency with enforcement discretion if a regulatory entity were unable to meet certain monitoring and recordkeeping requirements. In response, state Attorneys General led by NY dropped their lawsuit against EPA on September 10th. EPA had originally issued the enforcement discretion policy in March to help regulated entities prioritize worker safety during the shutdowns while trying to continue their operations. Regarding the agency's compliance with EO 13891 that required the agency to post all of their guidance on an online portal, EPA continues to update the portal with guidance documents. EO 13891 states that any guidance document not posted on the portal is considered rescinded. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

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Migratory Bird Treaty Act

The Chamber continues to monitor developments from the Department of the Interior regarding reforms to the Migratory Bird Treaty Act ("MBTA"). In October, the Chamber joined other trade associations for a meeting with the Office of Management and Budget in support of a forthcoming proposal that would codify DOI's interpretation that the MBTA does not prohibit the incidental take of Migratory Birds. Additionally, legislation is expected to be introduced in the House that would create a permit program for regulated industries under the MBTA. **Please contact Christopher Guith** Redacted - PII **with any questions.**

Nationwide Permit Program

On Monday, August 3rd, the Army Corps of Engineers released its draft [reauthorization rule](#) and proposed updates to the Clean Water Act Nationwide Permit (NWP) program. The NWP program must be reauthorized by 2022. Among other changes, the draft rule proposes separating NWP-12 into three NWPS, with NWP-12 covering only oil and gas pipelines. Two new NWPs would authorize activities associated with electric utility lines/telecommunication lines and utility lines that convey water, sewage, and other substances. Absent are industry recommendation to address Endangered Species Act (ESA) consultation concerns raised in the Montana Federal District Court ruling vacating NWP-12 for the Keystone XL pipeline. There will be a 60-day public comment period

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Following the July 15th issuance of CEQ's final rulemaking, four lawsuits have been filed by environmental groups challenging the NEPA final rulemaking. Three lawsuits have been filed by environmental groups in different federal courts including the Western District of Virginia, Northern District of California, and Southern District of New York. One lawsuit has been filed by state attorneys general in the Northern District of California. The Chamber is currently collaborating with other trade associations on the best way to provide legal support for the NEPA updates.

In response to the lawsuits, the U.S. Chamber of Commerce, along with eight other associations, intervened in the Western District of Virginia case to support the NEPA regulatory updates. The first hearing regarding in that case was held on September 4th. Environmental groups had moved for a preliminary injunction to block the rule's implementation before it becomes effective on September 14th. The Chamber opposed the motion and provided oral argument supporting denial. We further filed a motion to dismiss. On September 11, 2020, the court issued an order denying the motion for a preliminary injunction, holding that the environmental groups had failed to establish they are likely to succeed on the merits. The court has not yet ruled on our motion to dismiss, which will determine next steps. The Chamber and its partners are also planning to request intervention in the other challenges to the new NEPA regulations.

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FAST-41 Reauthorization

GEI has pulled together a broad coalition of trade associations to support the reauthorization of Title 41 of the Fixing America's Surface Transportation Act (FAST Act). The FAST Act, and specifically Title 41, which created the Federal Permitting Improvements Steering Councils (FPISC) and permitting dashboard, has been tremendously helpful at increasing the efficiency of the federal government's permitting process for critical infrastructure. The FAST-41 component will sunset at the end of 2021 potentially leaving \$58.5 billion in critical infrastructure projects vulnerable to delays. We'll be actively promoting the reauthorization of FAST-41 in upcoming legislation. **Please contact** [Redacted - PII] **with any questions.**

DFC Nuclear Policy Change

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New York Section 126 Petition

On October 29, 2019, the State of New York, the State of New Jersey, and the City of New York filed a petition for review with the Court of Appeals for the D.C. Circuit challenging the EPA's denial of New York's "good neighbor" petition under Section 126 of the Clean Air Act. The Chamber has led a coalition of trade associations and companies, identified as the Air Stewardship Coalition (ASC), that intervened in this case and filed a brief on March 5, 2020, supporting the EPA's denial of New York's petition targeted at nearly 350 facilities across 9 states. On July 14, 2020, the Court of Appeals for the D.C. Circuit issued its [decision that](#) rejects EPA's bases for denying New York's Section 126 petition and remanded the dispute back to EPA for action consistent with the decision. The D.C. Circuit's opinion rested on its determination that EPA failed to rationally explain the allocation of the burden to support the imposition of additional pollution controls on the targeted sources. Importantly, the Chamber's brief had provided and argued additional grounds for rejecting New York's petition, but EPA did not adopt them. The majority of the three-judge panel acknowledged our arguments but did not consider them because EPA did not rely on them. In a helpful concurring opinion, Judge Griffith adopted our argument regarding the appropriate scope of a petition under Section 126 to an actual "source or group of sources," and suggested that EPA could rely on the section's more limited scope in a future case. The Chamber is working with its partners in the ASC to encourage the EPA to promptly deny New York's petition on remand, justified on the ASC's prior modeling efforts and the expansive nature of the "group" of sources targeted by New York's petition. **Please contact**

Redacted - PII

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Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

In September 2018, EPA announced a major rulemaking to modify fuel economy and greenhouse gas standards for light duty vehicles (cars, SUVs, and trucks). The proposal rescinded California's special Clean Air Act waiver to set more stringent standards than the federal government and proposed to freeze fuel economy requirements beginning in model year 2021. In response, the Global Energy Institute published a report, "Divided Highway," that called for preservation of a single national auto market, and a middle ground compromise the Trump Administration proposal and the Obama-era standards.

In October 2019, the Administration finalized rescission of California's CAA waiver, and on March 31st, EPA and the Department of Transportation finalized the revised standards, which require 1.5 percent year-over-year increases in fuel economy through model year 2026. GEI President Marty Durbin released a [statement](#) commending the agencies for striking a balanced approach in the final rule. Litigation is now underway in

both rulemakings. ***Please contact*** Redacted - PII ***with any questions.***

Read-ahead for the Environment & Agriculture Issues

Great American Outdoors Act

The Great American Outdoors Act was signed by the president on August 4, 2020. The new law will help address our national parks operations and maintenance backlog and permanently fund the Land and Water Conservation Fund, building modern, resilient infrastructure and ensuring job creation and economic growth throughout our communities. The Chamber, the National Audubon Society, and the Pew Charitable Trusts issued a joint [statement](#). **Please contact Christopher Guith**

Redacted - PII

with any questions.

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hardrock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. Finalization of these rulemakings is anticipated in the coming months. **Please contact**

Redacted - PII

with any questions.

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. The Chamber is also working independently

and with other stakeholders to inform potential forthcoming guidance from EPA on its intended implementation of the “functional equivalent” test. Most recently, on September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

HFC Phasedown Legislation

In lieu of a proposed hearing, the Senate Committee on Environment and Public Works (EPW) had a call for information on the American Innovation and Manufacturing (AIM) Act. The Chamber provided [comments outlining our support for the legislation and identifying key priorities and challenges, including the potential job growth at no cost to the taxpayer](#). The Committee sent questions for the record on which we offered responses, provided on April 29, 2020. EPW majority and minority have agreed to compromise language that will likely be considered on the Senate floor during this week’s climate and energy innovation package debate. The Chamber, working with coalition of stakeholders, is sending a letter thanking EPW leaders for the important work and urging passage. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Chamber is working with the American Chemistry Council, the Plastics Industry Association, and member companies to engage members of the House and Senate to address outstanding issues and pass the Save Our Seas 2.0 Act of 2019 before the end of the year. **Please contact** [Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

EPA is advancing rulemakings on the current National Ambient Air Quality Standards (NAAQS) for both ozone and particulate matter, which are required by the Clean Air Act every five years. EPA published its proposal to retain the existing PM and Ozone standards on April 30, 2020 and August 14, 2020, respectively. The Chamber testified at the EPA PM NAAQS public hearing supporting EPA’s retention of the current standards and submitted more detailed [coalition comments](#) on the proposal. A similar sequence is underway regarding the Ozone NAAQS. On August 14th, EPA issued a rulemaking proposing to retain the current Ozone standards at its 2015 level of 70 parts per billion, requesting comment on the proposal by October 1, 2020. The Chamber issued a [statement](#) on the ozone proposal, testified at EPA’s public hearing on September 1st, and is working with a coalition in the preparation of formal public comments on the ozone rule. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

EPA PFAS Interim Guidance. On July 27, 2020, EPA submitted for OMB review [interim guidance on PFAS waste disposal and destruction](#). EPA prepared the guidance

in response to an amendment to the FY2020 National Defense Authorization Act that requires EPA to issue interim guidance on disposal and destruction of PFAS materials and update it every three years. The Chamber held a virtual meeting with OMB and EPA on September 9, 2020, in which the timeline for finalizing was raised. There will be a 30 day comment period once OMB concludes its review. The NDAA requires that the guidance is completed by the end of the year. . **Please contact** [Redacted - PII]

[Redacted - PII] **with questions or to get engaged.**

The [Toxics in Packaging Clearinghouse](#), formed in 1992 to promote the Model Toxics in Packaging Legislation, has a [request for comments](#) out on revising their model legislation, including potential restrictions on PFAS. Please provide your feedback as soon as possible on whether the Chamber provided comments on August 24, 2020.

The Chamber and the coalition recently sent letters opposing amendments and language proposed in the FY 21 National Defense Authorization Act in both the House and Senate and will be urging that the provisions not be included in the final NDAA package. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Resilience Revolving Loan Fund

The Senate will likely hotline the of the Senate companion to the Resilience Revolving Loan Fund Act sometime during the week of September 14, 2020. The bill would establish a resilience revolving loan fund, similar to the drinking water SRF that would offer low interest loans to communities to better prepare them for a wide range of possible disasters, including droughts. The Chamber is sending a coalition letter urging immediate action. . The Chamber also developed [resilience principles](#) to guide how to advocate for building modern, resilient infrastructure policies and used them to evaluate the Invest in America Act, reauthorizing federal surface transportation programs, H.R. 2, the broader House Democratic infrastructure package, and the [recent report from the House Select Committee on the Climate Crisis](#). **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

TSCA Risk Management

On September 8th, EPA [announced](#) a series of meetings and stakeholder engagement opportunities related to forthcoming risk management actions under the revised Toxic Substances and Control Act (TSCA). This effort follows a recently filed petition by a coalition of trade groups including the Chamber requesting that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. The Chamber expects to be an active participant in the EPA engagement on this issue, and welcomes member input on the issue. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Stormwater Innovation Principles

The Chamber and the coalition held a meeting with the EPA stormwater and NPDES permitting teams on August 20, 2020 to discuss collaboration opportunities. **Please contact** [Redacted - PII] **with any questions.**

Water Infrastructure and Policy Priorities

The Chamber sent a letter to all Members of Congress urging passage of the Water Resources Development Act before it expires on September 30, 2020 and to include our water policy priorities in infrastructure legislation. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final rule to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the final rulemaking that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber is joining a coalition to the Senate Committee on Environment and Public Works providing recommendations on the implementation of the rule.

EPA Scientific Transparency

On May 18, 2020, the Chamber filed comments responding to EPA’s supplemental proposal modifying its 2018 proposed regulation aimed at increasing the transparency of scientific data and information used in regulatory decision-making. **Please contact**

[Redacted - PII] **with any questions.**

EPA Cost-Benefit Analysis

On June 4, 2020, EPA proposed a rule to reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. The rule was published in the federal register and EPA is accepting comments until August 3rd. In response to the proposal, GEI issued this statement, presented testimony at the agency's public hearing on the rule, launched an advocacy webpage. The Chamber submitted coalition comments in conjunction with several other trades for the August 3rd deadline. EPA’s Science Advisory Board has an upcoming meeting on September 15th to discuss the proposed rule and provide advice to the Administrator for consideration in the final rulemaking. EPA has indicated in their regulatory agenda that they plan to issue the final rulemaking in November 2020. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

EPA’s COVID Enforcement Guidance and Guidance Portal – On August 31, 2020, EPA terminated their COVID enforcement discretion guidance that the agency had

issued in March to provide the agency with enforcement discretion if a regulatory entity were unable to meet certain monitoring and recordkeeping requirements. In response, state Attorneys General led by NY dropped their lawsuit against EPA on September 10th. EPA had originally issued the enforcement discretion policy in March to help regulated entities prioritize worker safety during the shutdowns while trying to continue their operations. Regarding the agency's compliance with EO 13891 that required the agency to post all of their guidance on an online portal, EPA continues to update the portal with guidance documents. EO 13891 states that any guidance document not posted on the portal is considered rescinded. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

Read-Ahead Materials

October 21, 2020



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Read-ahead for the Energy, Clean Air, and Natural Resources Issues

Endangered Species Act Reform

On August 5th, the Department of the Interior (DOI) jointly with Department of Commerce (DOC) published a proposal that would add a definition of “habitat” to the regulations governing the listing of endangered and threatened species and designation of critical habitat under the Endangered Species Act (ESA). In the recent Supreme Court ruling in *Weyerhaeuser Co. v. U.S. FWS*, the court explained that any area that meets the narrow category of critical habitat must logically be habitat. However, neither agency had yet established a definition for “habitat” although the statute provides a definition for “critical habitat.” The agencies provide a definition and propose an alternative. On September 4th, the Chamber [submitted comments](#) on the proposed rule suggesting that ‘habitat’ should only include places where the existing attributes currently exist to preclude agencies from requiring a place to be modified to support a species.

Please contact Christopher Guith Redacted - PII
Redacted - PII **with any questions.**

Electric Sector Supply Chain Activities

On May 1, 2020, the White House issued an [executive order](#) (EO) which seeks to limit the suppliers of electric grid equipment and essentially prohibits the purchase and use of such equipment from countries deemed adversarial to domestic grid security. The Chamber has been engaged with its electric utility and impacted supply chain members, along with the Edison Electric Institute (EEI), since this order’s issuance, and has developed a Principles document working with the Chamber’s supply chain membership to guide interactions with the Department of Energy (DOE) and the Administration. On July 8, 2020, DOE issued and had published in the Federal Register a [Request for Information \(RFI\)](#) seeking information to assist DOE’s understanding of the current practices employed by the energy industry to identify and mitigate vulnerabilities in supply chain components, and on August 24, 2020, the Chamber submitted comprehensive [comments](#) responsive to the RFI. On September 17, 2020, the Federal Energy Regulatory Commission (FERC) weighed in with the issuance of its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. The Chamber plans to submit comments responsive to FERC’s NOI by its November 23, 2020 deadline. **Please contact** Redacted - PII **with any questions.**

Energy Innovation Legislation

The Chamber continues to be a leading voice on Capitol Hill in favor of legislative efforts that aim to support the research, development, and deployment of innovative energy technologies, including advancements in battery storage technology, advanced nuclear, energy efficiency, and efforts that focus on carbon capture and sequestration (CCS) from fossil fuel generation sources. Through formal letters and informal advocacy efforts, the Chamber has expressed its support for the introduction, markup, and

ultimate passage of many related pieces of legislation. Recently, the Chamber worked with partner organizations to successfully ensure incorporation of the bipartisan Nuclear Energy Leadership Act (S. 903) in the FY2021 National Defense Authorization Act (NDAA). In addition to a [letter](#) to Senate leaders calling for this action, the Chamber joined 42 organizations in a [coalition letter](#) calling for the same. While efforts to secure support for a similar amendment in the House NDAA were unsuccessful, the Chamber plans to continue efforts to ensure that NELEA remains in the final NDAA package later this year. On the broader innovation front, the Chamber led a [letter](#) to House leadership, with nearly 40 trade group and association signatures, urging the advancement of an energy innovation package in that chamber. During the week of September 21, the House considered and passed H.R. 4447, the “Clean Economy Jobs and Innovation Act,” which includes many of the energy innovation initiatives we support. The Chamber sent all House members a [letter](#) generally supportive of this package. On the Senate side, informal pre-conferencing has commenced with the House on H.R. 4447, and we continue to look for a path forward for Senate passage of S. 2657, the American Energy Innovation Act. This comprehensive package of Chamber-supported bills stalled upon initial floor consideration in March 2020. **Please**

contact Redacted - PII
Redacted - PII **with questions.**

EPA MATS Rule

On April 16, 2020, the EPA issued its final rule modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA’s proposal to eliminate the “appropriate and necessary” finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the “appropriate and necessary” finding, while retaining the compliance obligations therein. On Friday, May 22 the MATS final rule’s publication in the *Federal Register* was met by its first lawsuit – now stayed – which challenges the retention of the MATS regulations now that the “appropriate and necessary” finding has been eliminated. Additional lawsuits were filed by environmental, industry, and other groups to challenge the EPA’s removal of the “appropriate and necessary” finding. These latter suits will now move forward first, and the Chamber is planning to participate as an amicus, with other interested stakeholders, in these pending lawsuits. **Please**

contact Redacted - PII **with any questions.**

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by

adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the “one-mile rule” used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities’ access to wholesale markets, among other things. Concurrent with FERC’s finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC’s final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. On September 18, 2020, the Solar Energy Industries Association filed a petition for review of FERC’s order in the U.S. Court of Appeals for the Ninth Circuit, but requested a 60-day abeyance in order to provide FERC additional time to act on pending requests for rehearing. **Please contact** [Redacted - PII]

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[Redacted - PII]

with any questions.

Migratory Bird Treaty Act

The Chamber continues to monitor developments from the Department of the Interior regarding reforms to the Migratory Bird Treaty Act (“MBTA”). In February, the U.S. Fish and Wildlife Service issued a [supplemental proposed rule](#) that if finalized would codify FWS’s interpretation that the MBTA’s prohibitions on taking only apply to actions directed at migratory birds, their nests, or their eggs and do not extend to incidental take of migratory birds. In July, FWS issued a [draft environmental impact statement](#) including an alternative that would exclude incidental take of birds from commercial activities. .

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On October 29, 2019, the State of New York, the State of New Jersey, and the City of New York filed a petition for review with the Court of Appeals for the D.C. Circuit challenging the EPA's denial of New York's "good neighbor" petition under Section 126 of the Clean Air Act. The Chamber has led a coalition of trade associations and companies, identified as the Air Stewardship Coalition (ASC), that intervened in this case and filed a brief on March 5, 2020, supporting the EPA's denial of New York's petition targeted at nearly 350 facilities across 9 states. On July 14, 2020, the Court of Appeals for the D.C. Circuit issued its [decision that](#) rejects EPA's bases for denying New York's Section 126 petition and remanded the dispute back to EPA for action consistent with the decision. The D.C. Circuit's opinion rested on its determination that EPA failed to rationally explain the allocation of the burden to support the imposition of additional pollution controls on the targeted sources. Importantly, the Chamber's brief had provided and argued additional grounds for rejecting New York's petition, but EPA did not adopt them. The majority of the three-judge panel acknowledged our arguments but did not consider them because EPA did not rely on them. In a helpful concurring opinion, Judge Griffith adopted our argument regarding the appropriate scope of a petition under Section 126 to an actual "source or group of sources," and suggested that EPA could rely on the section's more limited scope in a future case. The Chamber is continuing to work with its partners in the ASC to encourage the EPA to promptly deny New York's petition on remand, justified on the ASC's prior modeling efforts and the expansive nature of the "group" of sources targeted by New York's petition. **Please contact** Redacted - PII **with any questions.**

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

In September 2018, EPA announced a major rulemaking to modify fuel economy and greenhouse gas standards for light duty vehicles (cars, SUVs, and trucks). The proposal rescinded California's special Clean Air Act waiver to set more stringent standards than the federal government and proposed to freeze fuel economy requirements beginning in model year 2021. In response, the Global Energy Institute published a report, "Divided Highway," that called for preservation of a single national auto market, and a middle ground compromise the Trump Administration proposal and the Obama-era standards.

In October 2019, the Administration finalized rescission of California's CAA waiver, and on March 31st, EPA and the Department of Transportation finalized the revised standards, which require 1.5 percent year-over-year increases in fuel economy through model year 2026. GEI President Marty Durbin released a [statement](#) commending the agencies for striking a balanced approach in the final rule. Litigation is now underway in both rulemakings. On September 16th, the Chamber filed an amicus brief supporting the

Administration's assertion of federal preemption authority in the waiver case. **Please contact** [Redacted - PII] **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019 the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration's Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA's CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber's [brief](#), submitted primarily in defense of the EPA's repeal of the CPP, was submitted on July 16, 2020. On October 5, 2020, the Chamber hosted a moot court to help prepare Lindsay See, Solicitor General of West Virginia, for the oral argument, as she would argue the case on behalf of the states, industry groups, and labor unions aligned with the Chamber. On October 8, 2020, the Court held approximately 9 hours of oral argument focused on the merits of the EPA's repeal of the Clean Power Plan (CPP) and its replacement of that regulation with the ACE Rule. As evidenced by the extraordinary length of the hearing, which greatly exceeded the argument time allocated in advance, the panel of judges was highly engaged with each of the many lawyers who presented their positions before the Court. The case was argued before Judges Millett (Obama appointee), Pillard (Obama appointee), and Walker (Trump appointee). An order in this proceeding is anticipated either very late this year or early in 2021. **Please contact**

[Redacted - PII]

with any questions.

EPA Fuels Regulatory Streamlining

On October 15, 2020, EPA announced their [final rulemaking](#) that streamlines the compliance requirements for the agency's existing gasoline, diesel, and other non-RFS fuels regulations. The Chamber submitted [comments](#) in support of the proposed rule, met with the White House Office of Management and Budget while the rule was under White House review, and hosted an EPA briefing on the proposal this summer. EPA estimated that the final rule will reduce industry's administrative compliance costs more than \$40 million per year due to fewer batch reports, less retail sampling, less testing, and other savings. The rule changes will go into effect starting January 1, 2021. We'll keep you posted concerning the public workshop [that EPA plans to host](#) in December to walk through the rule changes. **Please contact** [Redacted - PII]

[Redacted - PII]

with any questions.

Reclassification of Major Sources to Area Sources

On October 1, 2020, EPA announced the [final rule](#) that would incentivize companies to apply innovative process changes or other technologies to drive emissions reductions, consistent with the purpose of the Clean Air Act. The Chamber submitted [comments](#) as part of a coalition in support of the updates. The rule makes a common sense policy update for companies that have facilities with emissions above the major source threshold to evaluate their facility's operations and voluntarily consider cost effective ways to cut their emissions below the major source threshold. This opportunity for

reclassification as an area source aligns compliance requirements with actual facility operations, reducing disincentives to take emissions-reducing measures while building on improvements in air quality that have been achieved the past several decades.

Please contact [Redacted - PII] **with any questions.**

Large Storage Tanks Proposal

On October 7, 2020, EPA proposed amendments to Clean Air Act regulations for certain liquid storage vessels offering regulatory relief to petroleum, chemical, and coal products and manufacturing facilities, as well as petroleum bulk stations at terminals.

The proposal would offer flexibility to conduct “in-service” inspections to avoid draining the tank contents as is currently required by the “out-of-service” inspections. Comments on the proposal are due by the November 16, 2020 deadline. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Read-ahead for the Environment & Agriculture Issues

Great American Outdoors Act

The Great American Outdoors Act was signed by the president on August 4, 2020. The new law will help address our national parks operations and maintenance backlog and permanently fund the Land and Water Conservation Fund, building modern, resilient infrastructure and ensuring job creation and economic growth throughout our communities. The Chamber, the National Audubon Society, and the Pew Charitable Trusts issued a joint [statement](#). **Please contact Christopher Guith**

Redacted - PII

with any questions.

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hardrock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. Finalization of these rulemakings is anticipated in the coming months. **Please contact**

Redacted - PII

with any questions.

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. The Chamber is also working independently

and with other stakeholders to inform potential forthcoming guidance from EPA on its intended implementation of the “functional equivalent” test. Most recently, on September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

HFC Phasedown Legislation

Senate Committee on Environment and Public Works (EPW) majority and minority have agreed to [compromise](#) language on the American Innovation and Manufacturing (AIM) Act that will likely be considered as the Senate considers their climate and energy innovation package during the coming weeks. The Chamber, working with coalition of stakeholders, sent a [letter](#) thanking EPW leaders for the important work and urging passage. **Please contact** [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The House passed S. 1982, the Save Our Seas 2.0 Act under suspension of the rules on October 1, 2020. The Chamber sent a [Key Vote Letter](#) and [coalition letter](#) to support passage. The legislation, intended to address national and global challenges related to marine debris and plastic waste, was slightly revised and therefore headed back to the Senate for final passage. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

EPA is advancing rulemakings on the current National Ambient Air Quality Standards (NAAQS) for both ozone and particulate matter, which are required by the Clean Air Act every five years. EPA published its proposal to retain the existing PM and Ozone standards on April 30, 2020 and August 14, 2020, respectively. The Chamber testified at the EPA PM NAAQS public hearing supporting EPA’s retention of the current standards and submitted more detailed [coalition comments](#) on the proposal. A similar sequence is underway regarding the Ozone NAAQS. On August 14th, EPA issued a rulemaking proposing to retain the current Ozone standards at its 2015 level of 70 parts per billion, requesting comment on the proposal by October 1, 2020. The Chamber issued a [statement](#) on the ozone proposal, testified at EPA’s public hearing on September 1st, and is working with a coalition in the preparation of formal public comments on the ozone rule. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

EPA PFAS Interim Guidance

On July 27, 2020, EPA submitted for OMB review [interim guidance on PFAS waste disposal and destruction](#). EPA prepared the guidance in response to an amendment to the FY2020 National Defense Authorization Act that requires EPA to issue interim guidance on disposal and destruction of PFAS materials and update it every three years. The Chamber held a virtual meeting with OMB and EPA on September 9, 2020,

in which the timeline for finalizing was raised. There will be a 30 day comment period once OMB concludes its review. The NDAA requires that the guidance is completed by the end of the year.

The [Toxics in Packaging Clearinghouse](#) formed in 1992 to promote the Model Toxics in Packaging Legislation, has a [request for comments](#) out on revising their model legislation, including potential restrictions on PFAS. Please provide your feedback as soon as possible on whether the Chamber provided comments on August 24, 2020.

The Chamber recently sent a coalition [letter](#) urging the committee chairs to remove language proposed in the FY 21 National Defense Authorization Act from any final NDAA package. **Please contact** [Redacted - PII] **or** [Redacted - PII] **with any questions.**

Resilience Revolving Loan Fund

The Senate will likely hotline the of the Senate companion to the Resilience Revolving Loan Fund Act sometime during the coming weeks. The bill would establish a resilience revolving loan fund, similar to the drinking water SRF that would offer low interest loans to communities to better prepare them for a wide range of possible disasters, including droughts. The Chamber sent a coalition letter urging immediate action. The Chamber also developed [resilience principles](#) to guide how to advocate for building modern, resilient infrastructure policies and used them to evaluate the Invest in America Act, reauthorizing federal surface transportation programs, H.R. 2, the broader House Democratic infrastructure package, and the recent [report from the House Select Committee on the Climate Crisis](#). **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

TSCA Risk Management

On September 8th, EPA [announced](#) a series of meetings and stakeholder engagement opportunities related to forthcoming risk management actions under the revised Toxic Substances and Control Act (TSCA). This effort follows a recently filed petition by a coalition of trade groups including the Chamber requesting that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. The Chamber expects to be an active participant in the EPA engagement on this issue and welcomes member input on the issue. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

Stormwater Innovation Principles

The Chamber and the coalition held a meeting with the EPA stormwater and NPDES permitting teams on August 20, 2020 to discuss collaboration opportunities. **Please contact** [Redacted - PII] **with any questions.**

Water Infrastructure and Policy Priorities

The Chamber sent a [letter](#) to all Members of Congress urging passage of the Water Resources Development Act before it expires on September 30, 2020 and to include our water policy priorities in infrastructure legislation. **Please contact** [Redacted - PII]

[Redacted - PII]

with any questions.

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber is joining a coalition to the Senate Committee on Environment and Public Works providing recommendations on the implementation of the rule. **Please contact** [Redacted - PII]

[Redacted - PII]

with any questions.

EPA Scientific Transparency

On May 18, 2020, the Chamber [filed comments](#) responding to EPA’s [supplemental proposal](#) modifying its 2018 proposed regulation aimed at increasing the transparency of scientific data and information used in regulatory decision-making. **Please contact**

[Redacted - PII]

with any questions.

EPA Cost-Benefit Analysis

On June 4, 2020, EPA proposed a rule to reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. The rule was published in the federal register and EPA is accepting comments until August 3rd. In response to the proposal, GEI issued this statement, presented [testimony](#) at the agency's public hearing on the rule, launched an advocacy [webpage](#). The Chamber submitted [coalition comments](#) in conjunction with several other trades for the August 3rd deadline. On September 30, 2020, EPA’s Science Advisory Board released a set of [recommendations](#) to EPA for consideration for the final rulemaking. The letter recommended that the agency carefully consider which provisions to finalize or leave to guidance to make the rule more defensible. EPA has indicated in their regulatory agenda that they plan to issue the final rulemaking in November 2020. **Please contact**

[Redacted - PII]

[Redacted - PII]

with any questions.

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November 18, 2020



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Read-ahead for the Energy, Clean Air, and Natural Resources Issues

Endangered Species Act Reform

On August 5th, the Department of the Interior (DOI) jointly with Department of Commerce (DOC) published a proposal that would add a definition of “habitat” to the regulations governing the listing of endangered and threatened species and designation of critical habitat under the Endangered Species Act (ESA). In the recent Supreme Court ruling in *Weyerhaeuser Co. v. U.S. FWS*, the court explained that any area that meets the narrow category of critical habitat must logically be habitat. However, neither agency had yet established a definition for “habitat” although the statute provides a definition for “critical habitat.” The agencies provide a definition and propose an alternative. On September 4th, the Chamber [submitted comments](#) on the proposed rule suggesting that ‘habitat’ should only include places where the existing attributes currently exist to preclude agencies from requiring a place to be modified to support a species. On November 12th, DOI submitted for OMB review, a final rulemaking that would clarify the agency’s consideration of benefits of both including and excluding specific habitat segments in critical habitat designations. **Please contact Christopher Guith** [Redacted - PII] **or** [Redacted - PII] **with any questions.**

Electric Sector Supply Chain Activities

On May 1, 2020, the White House issued an [executive order](#) (EO) which seeks to limit the suppliers of electric grid equipment and essentially prohibits the purchase and use of such equipment from countries deemed adversarial to domestic grid security. The Chamber has been engaged with its electric utility and impacted supply chain members, along with the Edison Electric Institute (EEI), since this order’s issuance, and has developed a Principles document working with the Chamber’s supply chain membership to guide interactions with the Department of Energy (DOE) and the Administration. On July 8, 2020, DOE issued and had published in the Federal Register a [Request for Information \(RFI\)](#) seeking information to assist DOE’s understanding of the current practices employed by the energy industry to identify and mitigate vulnerabilities in supply chain components, and on August 24, 2020, the Chamber submitted comprehensive [comments](#) responsive to the RFI. On September 17, 2020, the Federal Energy Regulatory Commission (FERC) weighed in with the issuance of its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. The Chamber will submit comments responsive to FERC’s NOI, leveraging its supply chain Principles document, by the NOI’s November 23, 2020 comment deadline. **Please contact** [Redacted - PII] **with any questions.**

Energy Innovation Legislation

As the 116th Congress nears a close, the Chamber remains a leading voice on Capitol Hill in favor of advancing legislative efforts that aim to support the research, development, and deployment of innovative energy technologies, including advancements in battery storage technology, advanced nuclear, energy efficiency, and

carbon capture and sequestration (CCS) from fossil fuel generation sources. Through formal letters and informal advocacy efforts, the Chamber has often expressed its support for the introduction, markup, and ultimate passage of many related pieces of legislation. The Chamber also continues to support the incorporation of the bipartisan Nuclear Energy Leadership Act (S. 903) in the FY2021 National Defense Authorization Act (NDAA). In addition to a [letter](#) to Senate leaders calling for this action, the Chamber joined 42 organizations in a [coalition letter](#) calling for the same. On the broader innovation front, the Chamber led a [letter](#) to House leadership, with nearly 40 trade group and association signatures, urging the advancement of the “Clean Energy Jobs and Innovation Act,” H.R. 4447, which was considered and passed by the House during the week of September 21. H.R. 4447 includes many of the energy innovation initiatives supported by the Chamber. The Chamber sent all House members a [letter](#) generally supportive of this package’s passage. On the Senate side, informal pre-conferencing has commenced with the House on H.R. 4447, and we continue to advocate for a path forward for Senate passage of S. 2657, the “American Energy Innovation Act.” **Please contact** [Redacted - PII]

[Redacted - PII]

with questions.

EPA MATS Rule

On April 16, 2020, the EPA issued its final rule modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA’s proposal to eliminate the “appropriate and necessary” finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the “appropriate and necessary” finding, while retaining the compliance obligations therein. On Friday, May 22 the MATS final rule’s publication in the *Federal Register* was met by its first lawsuit – now stayed – which challenges the retention of the MATS regulations now that the “appropriate and necessary” finding has been eliminated. Additional lawsuits were filed by environmental, industry, and other groups to challenge the EPA’s removal of the “appropriate and necessary” finding. The Chamber is planning to participate as an amicus, with other interested stakeholders, in these pending lawsuits, which may be delayed or otherwise impacted if a Biden

Administration moves promptly to revisit the MATS rule. **Please contact** [Redacted - PII]

[Redacted - PII]

with any questions.

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing

Qualifying Facility energy rates, through the modification of the “one-mile rule” used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities’ access to wholesale markets, among other things. Concurrent with FERC’s finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC’s final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. On September 18, 2020, the Solar Energy Industries Association filed a petition for review of FERC’s order in the U.S. Court of Appeals for the Ninth Circuit, but requested a 60-day abeyance in order to provide FERC additional time to act on pending requests for rehearing. These rehearing requests are on the agenda to be addressed at FERC’s November 19 open meeting. **Please contact** Redacted - PII

Redacted - PII

with any questions.

Dakota Access Pipeline

In response to recent rulings by the U.S. District Court for the District of Columbia requiring the shut down and completion of an environmental review of the Dakota Access pipeline (DAPL), July 13 the U.S. Chamber and allied organizations jointly filed an amicus brief at the U.S. Court of Appeals for the D.C. Circuit in support of DAPL’s emergency motion to stay the district court’s shut down order. The U.S. filed its own appeal and emergency motion for a stay that same day. On July 14, the D.C. Circuit issued an order administratively staying the decision to shut down the pipeline while the Court considers DAPL and the Government’s motions. On August 5th, the D.C. Circuit made permanent its ruling that the pipeline could continue operating while the appeals court hears arguments on the underlying case. The court further decided to expedite the briefing schedule on the government’s appeal on the merits. On September 2, 2020 U.S. Chamber and industry groups submitted amicus brief urging the D.C. Circuit to reverse lower court decision. The U.S. Court of Appeals for the D.C. Circuit heard oral argument on November 4, 2020, in the appeal from a federal district court decision that would require an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for a federal easement needed for part of the pipeline. The district court also had ordered the pipeline to shutdown until the NEPA review is completed. On appeal, a D.C. Circuit motions panel issued an order staying the shutdown order, holding that the district court had failed to make the necessary findings for an injunction. During the oral argument on the merits, the judges questioned the adequacy of the Army Corps’ NEPA analysis. At the same time, the judges also pushed back on the Tribal groups who challenged the NEPA review, which might suggest the court believes a separate injunction would be needed to block the pipeline operations, not just the vacatur of the easement. **Please contact Christopher Guith**

Redacted - PII

with any questions.

Migratory Bird Treaty Act

The Chamber continues to monitor developments from the Department of the Interior regarding reforms to the Migratory Bird Treaty Act (“MBTA”). In February, the U.S. Fish and Wildlife Service issued a [supplemental proposed rule](#) that if finalized would codify FWS’s interpretation that the MBTA’s prohibitions on taking only apply to actions

directed at migratory birds, their nests, or their eggs and do not extend to incidental take of migratory birds. In July, FWS issued a [draft environmental impact statement](#) including an alternative that would exclude incidental take of birds from commercial activities.

Please contact Christopher Guith [Redacted - PII] **with any questions.**

Nationwide Permit Coalition Comments

The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer's [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community's broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation. **Please contact** [Redacted - PII] **or Christopher Guith** [Redacted - PII] **with any questions.**

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy — energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others – to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- On November 2, 2020, the Office of Management and Budget issued a memo to all agencies instructing them to prioritize NEPA modernization. The memo set a timeline for agencies to review and update their NEPA review procedures, requiring agencies to propose updates by September 14, 2021. There are close to 90 agencies with codified NEPA procedures. The full memo is [here](#).
- On October 26, 2020, Senator Mike Lee introduced the UNSHACKLE Act, which includes all of the provisions from the five NEPA reform bills that he has introduced over the last several months (S. 4265 – Data Transparency and Accountability; S. 4312 – State Assignment Expansion; S. 4590 – Agency Process Reform; S. 4619 – Accountability and Enforcement; S. 4829 – Legal Reform). The bill would adopt many of the NEPA updates from the CEQ final rulemaking establishing NEPA review deadlines, agency analysis requirements, funding of reviews by project sponsors; but also includes other provisions such as time limits on seeking judicial review.
- Five lawsuits have been filed by environmental groups and state attorneys general challenging the CEQ NEPA final rulemaking. The Chamber is currently collaborating with eight other trade associations on the best way to provide legal support for the NEPA updates and has intervened or filed to intervene in four of the five cases. **Please contact** [Redacted - PII] **with any questions.**

FAST-41 Reauthorization

GEI has pulled together a broad coalition of trade associations to support the reauthorization of Title 41 of the Fixing America's Surface Transportation Act (FAST Act). The FAST Act, and specifically Title 41, which created the Federal Permitting Improvements Steering Councils (FPISC) and permitting dashboard, has been tremendously helpful at increasing the efficiency of the federal government's permitting process for critical infrastructure. The FAST-41 component will sunset at the end of 2021 potentially leaving \$58.5 billion in critical infrastructure projects vulnerable to delays. We'll be actively promoting the reauthorization of FAST-41 in upcoming legislation. **Please contact** [Redacted - PII] **with any questions.**

DFC Nuclear Policy Change

On June 10th, the International Development Finance Corporation (DFC) announced a change in its policy, rescinding its ban on financing nuclear project. For two years, the Chamber has worked with DFC and its predecessor, OPIC, to change its near-sighted policy and released a [statement](#) supporting this important change. **Please contact Christopher Guith** [Redacted - PII] **with any questions.**

New York Section 126 Petition

On October 29, 2019, the State of New York, the State of New Jersey, and the City of New York filed a petition for review with the Court of Appeals for the D.C. Circuit challenging the EPA's denial of New York's "good neighbor" petition under Section 126 of the Clean Air Act. The Chamber has led a coalition of trade associations and companies, identified as the Air Stewardship Coalition (ASC), that intervened in this case and filed a brief on March 5, 2020, supporting the EPA's denial of New York's petition targeted at nearly 350 facilities across 9 states. On July 14, 2020, the Court of Appeals for the D.C. Circuit issued its [decision that](#) rejects EPA's bases for denying New York's Section 126 petition and remanded the dispute back to EPA for action consistent with the decision. The D.C. Circuit's opinion rested on its determination that EPA failed to rationally explain the allocation of the burden to support the imposition of additional pollution controls on the targeted sources. Importantly, the Chamber's brief had provided and argued additional grounds for rejecting New York's petition, but EPA did not adopt them. The majority of the three-judge panel acknowledged our arguments but did not consider them because EPA did not rely on them. In a helpful concurring opinion, Judge Griffith adopted our argument regarding the appropriate scope of a petition under Section 126 to an actual "source or group of sources," and suggested that EPA could rely on the section's more limited scope in a future case. The Chamber is continuing to work with its partners in the ASC to encourage the EPA to promptly deny New York's petition on remand, and is also evaluating whether to participate in a potential ASC comment effort focused on EPA's issuance of a revised Cross-State Air Pollution Rule (CSAPR) update on October 15, 2020. Comments in response to this CSAPR update proposal are due on December 14, 2020. **Please contact** [Redacted - PII] **with any questions.**

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

In September 2018, EPA announced a major rulemaking to modify fuel economy and greenhouse gas standards for light duty vehicles (cars, SUVs, and trucks). The proposal rescinded California's special Clean Air Act waiver to set more stringent standards than the federal government and proposed to freeze fuel economy requirements beginning in model year 2021. In response, the Global Energy Institute published a report, "Divided Highway," that called for preservation of a single national auto market, and a middle ground compromise the Trump Administration proposal and the Obama-era standards.

In October 2019, the Administration finalized rescission of California's CAA waiver, and on March 31st, EPA and the Department of Transportation finalized the revised standards, which require 1.5 percent year-over-year increases in fuel economy through model year 2026. GEI President Marty Durbin released a [statement](#) commending the agencies for striking a balanced approach in the final rule. Litigation is now underway in both rulemakings. On September 16th, the Chamber filed an amicus brief supporting the Administration's assertion of federal preemption authority in the waiver case. **Please contact** [Redacted - PII] **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019 the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration's Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA's CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber's [brief](#), submitted primarily in defense of the EPA's repeal of the CPP, was submitted on July 16, 2020. On October 5, 2020, the Chamber hosted a moot court to help prepare Lindsay See, Solicitor General of West Virginia, for the oral argument, as she would argue the case on behalf of the states, industry groups, and labor unions aligned with the Chamber. On October 8, 2020, the Court held approximately 9 hours of oral argument focused on the merits of the EPA's repeal of the Clean Power Plan (CPP) and its replacement of that regulation with the ACE Rule. As evidenced by the extraordinary length of the hearing, which greatly exceeded the argument time allocated in advance, the panel of judges was highly engaged with each of the many lawyers who presented their positions before the Court. The case was argued before Judges Millett (Obama appointee), Pillard (Obama appointee), and Walker (Trump appointee). An order in this proceeding would ordinarily be anticipated in early 2021, but the Biden Administration is anticipated to take immediate action to reconsider or withdraw the ACE Rule, thereby inserting some doubt as to whether a court decision will ultimately be issued. **Please contact** [Redacted - PII] **with any questions.**

New Source Review Project Emissions Accounting

On October 22, 2020, EPA finalized the New Source Review (NSR) rule that would allow for facilities to count emissions decreases, as opposed to just emissions increases, when applying for a new air permit for a new emissions source or major

modification to an existing source. The consideration of emissions decreases will be allowed in step 1 of the two-step applicability process where a facility must determine whether a project would have a “significant emission increase” subject to NSR preconstruction permitting requirements. EPA required only states that have ‘delegated’ federal authority, currently less than 10 states, to adopt the changes and allowed the remainder of the states the option of adopt the new NSR provisions. ***Please contact***

Redacted - PII

with any questions.

Read-ahead for the Environment & Agriculture Issues

Great American Outdoors Act

The Great American Outdoors Act was signed by the president on August 4, 2020. The new law will help address our national parks operations and maintenance backlog and permanently fund the Land and Water Conservation Fund, building modern, resilient infrastructure and ensuring job creation and economic growth throughout our communities. The Chamber, the National Audubon Society, and the Pew Charitable Trusts issued a joint [statement](#). **Please contact Christopher Guith**

Redacted - PII **with any questions.**

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hardrock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. Recent reports are that the finalization of these three proposals will be attempted via a single final rule, but additional details are limited at this time. **Please contact** *

Redacted - PII **with any questions.**

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case,

particularly on the record as developed. On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020. The Chamber is also working independently and with other stakeholders to inform potential forthcoming guidance from EPA on its intended implementation of the “functional equivalent” test. **Please contact** [Redacted - PII] **with any questions.**

HFC Phasedown Legislation

Senate Committee on Environment and Public Works (EPW) majority and minority have agreed to [compromise](#) language on the American Innovation and Manufacturing (AIM) Act that will likely be considered as the Senate considers their climate and energy innovation package during the coming weeks. The Chamber, working with coalition of stakeholders, sent a [letter](#) thanking EPW leaders for the important work and urging passage. **Please contact** [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The House passed S. 1982, the Save Our Seas 2.0 Act under suspension of the rules on October 1, 2020. The Chamber sent a [Key Vote Letter](#) and [coalition letter](#) to support passage. The legislation, intended to address national and global challenges related to marine debris and plastic waste, was slightly revised and therefore headed back to the Senate for final passage. **Please contact** [Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

On November 4, 2020, EPA submitted to OMB their final action for the review of the current particulate matter (PM) National Ambient Air Quality Standards (NAAQS). EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM_{2.5} NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m³ to 12 ug/m³. In April of this year, EPA proposed to retain the existing particulate matter standards. The Chamber testified at the EPA PM NAAQS public hearing supporting EPA’s retention of the current standards and submitted more detailed coalition comments on the proposal. The Chamber along with several partner associations will be meeting with OMB on November 16th to support EPA’s proposal to retain the current PM NAAQS standards. Following EPA’s NAAQS proposal, the Chamber also testified at the EPA PM NAAQS public hearing supporting EPA’s retention of the current standards and submitted more detailed [coalition comments](#) on their April proposal. A similar sequence is underway regarding the Ozone NAAQS. On August 14th, EPA issued a rulemaking proposing to retain the current Ozone standards at its 2015 level of 70 parts per billion, requesting comment on the proposal by October 1, 2020. The Chamber issued a [statement](#) on the ozone proposal, testified at EPA’s public hearing on September 1st, and submitted public comments with a coalition on

the ozone rule. **Please contact**
with any questions.

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EPA PFAS Interim Guidance

On July 27, 2020, EPA submitted for OMB review [interim guidance on PFAS waste disposal and destruction](#). EPA prepared the guidance in response to an amendment to the FY2020 National Defense Authorization Act that requires EPA to issue interim guidance on disposal and destruction of PFAS materials and update it every three years. The Chamber held a virtual meeting with OMB and EPA on September 9, 2020, in which the timeline for finalizing was raised. There will be a 30 day comment period once OMB concludes its review. The NDAA requires that the guidance is completed by the end of the year.

The [Toxics in Packaging Clearinghouse](#) formed in 1992 to promote the Model Toxics in Packaging Legislation, has a [request for comments](#) out on revising their model legislation, including potential restrictions on PFAS. Please provide your feedback as soon as possible on whether the Chamber provided comments on August 24, 2020.

The Chamber recently sent a coalition [letter](#) urging the committee chairs to remove language proposed in the FY 21 National Defense Authorization Act from any final NDAA package. **Please contact**

Redacted - PII

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with any questions.

Resilience Revolving Loan Fund

The Senate will likely hotline the of the Senate companion to the Resilience Revolving Loan Fund Act sometime during the coming weeks. The bill would establish a resilience revolving loan fund, similar to the drinking water SRF that would offer low interest loans to communities to better prepare them for a wide range of possible disasters, including droughts. The Chamber sent a coalition letter urging immediate action. The Chamber also developed [resilience principles](#) to guide how to advocate for building modern, resilient infrastructure policies and used them to evaluate the Invest in America Act, reauthorizing federal surface transportation programs, H.R. 2, the broader House Democratic infrastructure package, and the recent report from the House Select Committee on the Climate Crisis. **Please contact**

Redacted - PII

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with any questions.

TSCA Risk Management

On September 8th, EPA [announced](#) a series of meetings and stakeholder engagement opportunities related to forthcoming risk management actions under the revised Toxic Substances and Control Act (TSCA). This effort follows a recently filed petition by a coalition of trade groups including the Chamber requesting that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. The Chamber expects to be an active participant in the EPA engagement on this issue and welcomes member input on the issue. **Please contact**

Redacted - PII

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with any questions.

Stormwater Innovation Principles

The Chamber and the coalition held a meeting with the EPA stormwater and NPDES permitting teams on August 20, 2020 to discuss collaboration opportunities. **Please contact** [Redacted - PII] **with any questions.**

Water Infrastructure and Policy Priorities

The Chamber sent a [letter](#) to all Members of Congress urging passage of the Water Resources Development Act before it expires on September 30, 2020 and to include our water policy priorities in infrastructure legislation. **Please contact** [Redacted - PII] **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber is joining a coalition to the Senate Committee on Environment and Public Works providing recommendations on the implementation of the rule. **Please contact** [Redacted - PII] **with any questions.**

EPA Scientific Transparency

On May 18, 2020, the Chamber [filed comments](#) responding to EPA’s [supplemental proposal](#) modifying its 2018 proposed regulation aimed at increasing the transparency of scientific data and information used in regulatory decision-making. **Please contact** [Redacted - PII] **with any questions.**

EPA Cost-Benefit Analysis

On October 21, 2020, EPA submitted the final rule to OMB that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, we have requested a meeting with OMB to support the finalization of the rule and emphasize the importance of transparency and consistency in developing the agency’s cost-benefit analyses for rulemakings. Following the June proposal, GEI issued a statement, presented [testimony](#) at the agency’s public hearing on the rule, launched an advocacy [webpage](#). The Chamber submitted [coalition comments](#) in conjunction with several other trades by the August deadline. **Please contact** [Redacted - PII] **with any questions.**

U.S.-Mexico Water Market Intelligence Roundtable

The U.S. Chamber of Commerce, together with the Arizona Chamber of Commerce and Industry, the San Diego Regional Chamber of Commerce, and the Water Environment Federation, co-convened a virtual market intelligence roundtable on October 22, 2020 to ease market entry and bolster exports for U.S. water technologies, products, and services along the U.S.-Mexico border. The audience, composed of approximately 90 leading company executives and water practitioners, interagency leaders, and Mexican decision makers, explored how stakeholders can support increased private sector engagement to seek solutions. Key next steps include leverage the upcoming EPA public stakeholder meeting to carry key messages from this session forward, including the need for more private sector engagement in projects on both sides of the border; collaborate with our coalition of state and local chambers and member companies along the border, and with members of Congress and the administration on additional policies to address water and wastewater solutions; continue working with U.S. government agencies to ensure that businesses have access to the latest project opportunities and funding; follow up with Mexican interlocutors to build relationships with the U.S. private sector; and explore opportunities for lower-cost, low-tech solutions, including green infrastructure. **Please contact** [Redacted - PII] **with any questions.**

Read-Ahead Materials

December 8, 2020



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Environment & Agriculture

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Regulatory Scorecard

REGULATORY SCORECARD	
RULES FINALIZED & IN LITIGATION	
CEQ	NEPA Modernization
EPA	ACE
EPA	MATS
EPA	Methane NSPS
EPA	NSR PEA Guidance
EPA	NESHAP LEAN
EPA/ACOE	Navigable Waters/WOTUS
RULES/ACTIONS EXPECTED TO BE FINALIZED AFTER 12/07	
ACOE	Nationwide Permits
DOI	ANWR Lease Sale/Seismic
DOI	BLM Lease Sale EIS RODs
DOI	ESA Critical Habitat Designations
DOI	ESA Definition of Habitat
DOI	MBTA Incidental Take
EPA	Aircraft GHG Rule
EPA	Maui Guidance
EPA	NSR PEA Rule
EPA	Ozone NAAQS Rule (est. Dec. 18th)
EPA	Benefit-Cost Analysis Rule(est. Dec. 9th)
RULES FINALIZED IN CRA WINDOW	
CEQ	NEPA Modernization
DOE	LNG Exports Review under NGA
DOL	ESG Rule
EPA	Coal Combustion Residuals Rule - Part B
EPA	CERCLA Financial Assurance (Electric Utilities, Chemicals, Coal and Petroleum Products)
EPA	Effluent Limitation Guidelines
EPA	Fuels Regulatory Streamlining
EPA	Guidance Rule
EPA	Methane NSPS
EPA	Once-In, Always-In
EPA	Science Transparency
FERC	PURPA Modernization Rule

Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Endangered Species Act Reform

On November 18th, the Department of the Interior (DOI) jointly with Department of Commerce (DOC) sent to OMB their draft final rule proposal that would add a definition of “habitat” to the regulations governing the listing of endangered and threatened species and designation of critical habitat under the Endangered Species Act (ESA). In the recent Supreme Court ruling in *Weyerhaeuser Co. v. U.S. FWS*, the court explained that any area that meets the narrow category of critical habitat must logically be habitat. However, neither agency had yet established a definition for “habitat” although the statute provides a definition for “critical habitat.” The agencies provide a definition and propose an alternative. The Chamber [submitted comments](#) on the proposed rule suggesting that ‘habitat’ should only include places where the existing attributes currently exist to preclude agencies from requiring a place to be modified to support a species.

In a separate rulemaking submitted to OMB on November 12th, DOI will finalize clarifications to the agency’s consideration of benefits of both including and [excluding specific habitat segments](#) in critical habitat designations. **Please contact Christopher Guith** Redacted - PII **or** Redacted - PII **with any questions.**

Electric Sector Supply Chain Activities

On May 1, 2020, the White House issued an [executive order](#) (EO) which seeks to limit the suppliers of electric grid equipment and essentially prohibits the purchase and use of such equipment from countries deemed adversarial to domestic grid security. The Chamber has been engaged with its electric utility and impacted supply chain members, along with the Edison Electric Institute (EEI), since this order’s issuance, and has developed a Principles document working with the Chamber’s supply chain membership to guide interactions with the Department of Energy (DOE) and the Administration. On July 8, 2020, DOE issued and had published in the Federal Register a [Request for Information \(RFI\)](#) seeking information to assist DOE’s understanding of the current practices employed by the energy industry to identify and mitigate vulnerabilities in supply chain components, and on August 24, 2020, the Chamber submitted comprehensive [comments](#) responsive to the RFI. On September 17, 2020, the Federal Energy Regulatory Commission (FERC) weighed in with the issuance of its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its informal Supply Chain Working Group (the “SCWG”), the Chamber submitted [comments](#) responsive to FERC’s NOI on November 23, 2020. Most recently, the Chamber convened its SCWG together with EEI to provide feedback on EEI’s Model Procurement Contract Language Addressing Cybersecurity Supply Chain Risk, which is intended to facilitate compliance with reliability standard NERC CIP-013-1. The Chamber will be working with its SCWG to provide additional feedback to EEI on this model contract language. **Please contact** Redacted - PII

Redacted - PII **with any questions.**

Energy Innovation Legislation

As the 116th Congress nears a close, the Chamber is engaged in a last-minute push on Capitol Hill to advance legislative efforts that aim to support the research, development, and deployment of innovative energy technologies, including advancements in battery storage technology, advanced nuclear, energy efficiency, and carbon capture and sequestration (CCS) from fossil fuel generation sources. Through formal letters and informal advocacy efforts over the past two years, the Chamber has repeatedly expressed its support for the introduction, markup, and ultimate passage of many related pieces of legislation. Though the Chamber strongly supported the incorporation of language from the bipartisan Nuclear Energy Leadership Act (S. 903) in the FY2021 National Defense Authorization Act (NDAA), that language was not included in the NDAA conference report issued December 3, 2020. On the broader innovation front, the Chamber led a [letter](#) to House leadership, with nearly 40 trade group and association signatures, urging the advancement of the “Clean Energy Jobs and Innovation Act,” H.R. 4447, which was considered and passed by the House during the week of September 21. H.R. 4447 includes many of the energy innovation initiatives supported by the Chamber. The Chamber sent all House members a [letter](#) generally supportive of this package’s passage. As of the finalization of this Read-Ahead, informal pre-conferencing has continued to work on the integration of H.R. 4447 with the Senate’s S. 2657, the “American Energy Innovation Act.” The Chamber and its allies continue to advocate for the attachment of comprehensive energy innovation legislation onto must-pass end-of-year legislation. **Please contact** Redacted - PII

Redacted - PII

with questions.

EPA MATS Rule

On April 16, 2020, the EPA issued its final rule modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA’s proposal to eliminate the “appropriate and necessary” finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the “appropriate and necessary” finding, while retaining the compliance obligations therein. On Friday, May 22 the MATS final rule’s publication in the *Federal Register* was met by its first lawsuit – now stayed – which challenges the retention of the MATS regulations now that the “appropriate and necessary” finding has been eliminated. Additional lawsuits were filed by environmental, industry, and other groups to challenge the EPA’s removal of the “appropriate and necessary” finding. The Chamber is planning to participate as an amicus, with other interested stakeholders, in these pending lawsuits, which may be delayed or otherwise impacted if a Biden Administration moves promptly to revisit the MATS rule. **Please contact** Redacted - PII

Redacted - PII

with any questions.

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the “one-mile rule” used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities’ access to wholesale markets, among other things. Concurrent with FERC’s finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC’s final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. On September 18, 2020, the Solar Energy Industries Association filed a petition for review of FERC’s order in the U.S. Court of Appeals for the Ninth Circuit, but requested a 60-day abeyance in order to provide FERC additional time to act on pending requests for rehearing. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020, clearing the way for the Ninth Circuit litigation to proceed. The Chamber anticipates playing a role, with industry allies, in defense of PURPA’s modernization. **Please contact** Redacted - PII

Redacted - PII

with any questions.

Migratory Bird Treaty Act

On November 9th, the U.S. Fish and Wildlife Service submitted for OMB review a final rulemaking that if codified would update FWS’s interpretation that the Migratory Bird Treaty Act’s (“MBTA”) prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. On December 14th, the Chamber along with other trade association partners will be meeting with OMB to discuss the final rule and express our support for the update. In February, the U.S. Fish and Wildlife Service issued a [supplemental proposed rule](#) and in July, FWS issued a [draft environmental impact statement](#) including an alternative that would exclude incidental take of birds from commercial activities. **Please contact Christopher Guith** Redacted - PII

with any questions.

Nationwide Permit Coalition Comments

The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer’s [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community’s broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation. **Please contact** Redacted - PII

Redacted - PII

or Christopher Guith

Redacted - PII

with any questions.

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy — energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others – to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- **DOE NEPA Final Rule on LNG Terminals** – On December 4, 2020, DOE finalized their NEPA rulemaking that would narrow the required analysis under NEPA for LNG exports and remove the requirement for NEPA analysis for LNG imports. For exports, DOE made two primary changes: (1) making the interpretation that the Natural Gas Act (NGA) authorizes LNG exports to Free Trade Agreement (FTA) countries limiting the discretion under NEPA for approvals and (2) limiting the consideration of effects for LNG exports to non-FTA countries to those occurring at or after the point of export. For imports, DOE also interprets the NGA to require authorization of imports so the agency removed the reference to NEPA authorizations from their implementing rule. The Chamber's coalition comments on the proposal can be found [here](#).
- **DOT Proposed Update to NEPA Procedures** - On November 23, 2020, the U.S. Department of Transportation's (DOT) proposed a rule to update and codify its internal order establishing the responsibilities and procedures for complying with the National Environmental Policy Act (NEPA). DOT has proposed updating their procedures consistent with the Council on Environmental Quality's (CEQ's) final rule updating its NEPA procedures; incorporating provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); Moving Ahead for Progress in the 21st Century Act (MAP-21); and the Fixing America's Surface Transportation (FAST) Act related to the Department's environmental review process; and updating the list of the Department's categorical exclusions consistent with the CEQ's regulations implementing NEPA. The Chamber will be submitting comments on the proposed rule by the December 23, 2020 deadline. **Please contact** [Redacted - PII] **with any questions.**
- Five lawsuits have been filed by environmental groups and state attorneys general challenging the CEQ NEPA final rulemaking. The Chamber is currently collaborating with eight other trade associations on the best way to provide legal support for the NEPA updates and has intervened or filed to intervene in four of the five cases. **Please contact** [Redacted - PII] **with any questions.**

FIPSC Proposal to Create Sector for Mining

On November 27th, the Federal Permitting Improvement Steering Council (FIPSC) proposed to add mining as a sector with infrastructure projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act (FAST-41). The new mining category would focus on minerals, ore, and raw materials used for energy production, manufacturing, or other purpose. It would not include conventional energy production such as coal and oil & gas as they are

already covered under an existing FIPSC sector. The addition of mining as a FAST-41 sector would allow a qualified mining infrastructure project to become a FAST-41 covered project. The Chamber will be submitting comments on the [proposed rule](#) by the December 28, 2020 deadline. **Please contact** [Redacted - PII] **with any questions.**

DFC Nuclear Policy Change

On June 10th, the International Development Finance Corporation (DFC) announced a change in its policy, rescinding its ban on financing nuclear project. For two years, the Chamber has worked with DFC and its predecessor, OPIC, to change its near-sighted policy and released a [statement](#) supporting this important change. **Please contact Christopher Guith** [Redacted - PII] **with any questions.**

New York Section 126 Petition

On October 29, 2019, the State of New York, the State of New Jersey, and the City of New York filed a petition for review with the Court of Appeals for the D.C. Circuit challenging the EPA's denial of New York's "good neighbor" petition under Section 126 of the Clean Air Act. The Chamber has led a coalition of trade associations and companies, identified as the Air Stewardship Coalition (ASC), that intervened in this case and filed a brief on March 5, 2020, supporting the EPA's denial of New York's petition targeted at nearly 350 facilities across 9 states. On July 14, 2020, the Court of Appeals for the D.C. Circuit issued its [decision that](#) rejects EPA's bases for denying New York's Section 126 petition and remanded the dispute back to EPA for action consistent with the decision. The D.C. Circuit's opinion rested on its determination that EPA failed to rationally explain the allocation of the burden to support the imposition of additional pollution controls on the targeted sources. Importantly, the Chamber's brief had provided and argued additional grounds for rejecting New York's petition, but EPA did not adopt them. The majority of the three-judge panel acknowledged our arguments but did not consider them because EPA did not rely on them. In a helpful concurring opinion, Judge Griffith adopted our argument regarding the appropriate scope of a petition under Section 126 to an actual "source or group of sources," and suggested that EPA could rely on the section's more limited scope in a future case. The Chamber is continuing to work with its partners in the ASC to encourage the EPA to promptly deny New York's petition on remand, and is moving forward with the development of comments focused on EPA's issuance of a revised Cross-State Air Pollution Rule (CSAPR) update on October 15, 2020. Chamber/ASC comments responsive to the update proposal will be submitted by the December 14, 2020 comment deadline. **Please contact** [Redacted - PII] **with any questions.**

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

In September 2018, EPA announced a major rulemaking to modify fuel economy and greenhouse gas standards for light duty vehicles (cars, SUVs, and trucks). The proposal rescinded California's special Clean Air Act waiver to set more stringent standards than the federal government and proposed to freeze fuel economy requirements beginning in model year 2021. In response, the Global Energy Institute published a report, "Divided Highway," that

called for preservation of a single national auto market, and a middle ground compromise the Trump Administration proposal and the Obama-era standards.

In October 2019, the Administration finalized rescission of California's CAA waiver, and on March 31st, EPA and the Department of Transportation finalized the revised standards, which require 1.5 percent year-over-year increases in fuel economy through model year 2026. GEI President Marty Durbin released a [statement](#) commending the agencies for striking a balanced approach in the final rule. Litigation is now underway in both rulemakings. On September 16th, the Chamber filed an amicus brief supporting the Administration's assertion of federal preemption authority in the waiver case. **Please contact** Redacted - PII **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019 the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration's Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA's CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber's [brief](#), submitted primarily in defense of the EPA's repeal of the CPP, was submitted on July 16, 2020. On October 5, 2020, the Chamber hosted a moot court to help prepare Lindsay See, Solicitor General of West Virginia, for the oral argument, as she would argue the case on behalf of the states, industry groups, and labor unions aligned with the Chamber. On October 8, 2020, the Court held approximately 9 hours of oral argument focused on the merits of the EPA's repeal of the Clean Power Plan (CPP) and its replacement of that regulation with the ACE Rule. As evidenced by the extraordinary length of the hearing, which greatly exceeded the argument time allocated in advance, the panel of judges was highly engaged with each of the many lawyers who presented their positions before the Court. The case was argued before Judges Millett (Obama appointee), Pillard (Obama appointee), and Walker (Trump appointee). An order in this proceeding would ordinarily be anticipated in early 2021, but the Biden Administration is anticipated to take immediate action to reconsider or withdraw the ACE Rule, thereby inserting some doubt as to whether a court decision will ultimately be issued. **Please contact** Redacted - PII

Redacted - PII **with any questions.**

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hardrock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings *via* a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. **Please contact** Redacted - PII **with any questions.**

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020. Separately, EPA guidance, for which the Chamber had advocated, intended to clarify the future implementation of the “functional equivalent” test, is currently being reviewed at OMB. This guidance’s public release, for an ensuing 30-day public comment period, is reported as imminent. **Please contact** Redacted - PII Redacted - PII **with any questions.**

HFC Phasedown Legislation

Senate Committee on Environment and Public Works (EPW) majority and minority have agreed to [compromise](#) language on the American Innovation and Manufacturing (AIM) Act. The AIM Act is being considered as part of a package of legislation that will likely be part of the broader climate and energy innovation package and/or the omnibus appropriations agreement during the coming week. The Chamber, working with coalition of stakeholders, sent a [letter](#) thanking EPW leaders for the important work and urging passage. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Senate passed the House amended version of S.1982, the Save Our Seas 2.0 Act by unanimous consent on December 1, 2020. The Chamber, together with the American Chemistry Council and the National Association of Manufacturers [issued a statement](#) calling for the president's signature. The legislation is intended to address national and global challenges related to marine debris and plastic waste. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

On November 4, 2020, EPA submitted to OMB their final action for the review of the current particulate matter (PM) National Ambient Air Quality Standards (NAAQS). The rulemaking is expected to be finalized the week of December 7th. EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM2.5 NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m3 to 12 ug/m3. In April of this year, EPA proposed to retain the existing particulate matter standards. The Chamber testified at the EPA PM NAAQS public hearing supporting EPA's retention of the current standards and submitted more detailed coalition comments on the proposal. The Chamber, along with several partner associations, met with OMB on November 16th to support EPA's proposal to retain the current PM NAAQS standards. A similar sequence is underway regarding the Ozone NAAQS. On August 14th, EPA issued a rulemaking proposing to retain the current Ozone standards at its 2015 level of 70 parts per billion, requesting comment on the proposal by October 1, 2020. The Chamber issued a [statement](#) on the ozone proposal, testified at EPA's public hearing on September 1st, and submitted public comments with a coalition on the ozone rule. The rule is expected to be finalized sometime in December. **Please contact** [*] [Redacted - PII] **with any questions.**

EPA PFAS Interim Guidance

On July 27, 2020, EPA submitted for OMB review [interim guidance on PFAS waste disposal and destruction](#). EPA prepared the guidance in response to an amendment to the FY2020 National Defense Authorization Act that requires EPA to issue interim guidance on disposal and destruction of PFAS materials and update it every three years. The Chamber held a virtual meeting with OMB and EPA on September 9, 2020, in which the timeline for finalizing was raised. There will be a 30-day comment period once OMB concludes its review. The NDAA requires that the guidance is completed by the end of the year.

The [Toxics in Packaging Clearinghouse](#) formed in 1992 to promote the Model Toxics in Packaging Legislation, has a [request for comments](#) out on revising their model legislation, including potential restrictions on PFAS. Please provide your feedback as soon as possible on whether the Chamber provided comments on August 24, 2020.

The Chamber recently sent a coalition [letter](#) urging the committee chairs to remove language proposed in the FY 21 National Defense Authorization Act from any final NDAA package. The proposed TRI language was not included, and the DoD procurement restrictions apply only to PFOA and PFOS and a few products. **Please contact** Redacted - PII
Redacted - PII **with any questions.**

Resilience Revolving Loan Fund

The Senate will likely hotline the of the Senate companion to the Resilience Revolving Loan Fund Act sometime during the coming weeks. The bill would establish a resilience revolving loan fund, similar to the drinking water SRF that would offer low interest loans to communities to better prepare them for a wide range of possible disasters, including droughts. The Chamber sent a coalition letter urging immediate action. The Chamber also developed [resilience principles](#) to guide how to advocate for building modern, resilient infrastructure policies and used them to evaluate the Invest in America Act, reauthorizing federal surface transportation programs, H.R. 2, the broader House Democratic infrastructure package, and the recent report from the House Select Committee on the Climate Crisis. **Please contact** Redacted - PII
Redacted - PII **with any questions.**

TSCA Risk Management

On September 8th, EPA [announced](#) a series of meetings and stakeholder engagement opportunities related to forthcoming risk management actions under the revised Toxic Substances and Control Act (TSCA). This effort follows a recently filed petition by a coalition of trade groups including the Chamber requesting that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. The Chamber expects to be an active participant in the EPA engagement on this issue and welcomes member input on the issue. **Please contact** Redacted - PII **with any questions.**

Stormwater Innovation Principles

The Chamber and the coalition held a meeting with the EPA stormwater and NPDES permitting teams on August 20, 2020 to discuss collaboration opportunities. **Please contact** *
Redacted - PII **with any questions.**

Water Infrastructure and Policy Priorities

The Chamber sent a [letter](#) to all Members of Congress urging passage of the Water Resources Development Act before it expires on September 30, 2020 and to include our water policy priorities in infrastructure legislation. **Please contact** Redacted - PII
Redacted - PII **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber is joining a coalition to the Senate Committee on Environment and Public Works providing recommendations on the implementation of the rule. **Please contact**

Redacted - PII

with any questions.

EPA Scientific Transparency

On May 18, 2020, the Chamber [filed comments](#) responding to EPA’s [supplemental proposal](#) modifying its 2018 proposed regulation aimed at increasing the transparency of scientific data and information used in regulatory decision-making. **Please contact**

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with any questions.

EPA Cost-Benefit Analysis

On October 21, 2020, EPA submitted the final rule to OMB that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, we have met with OMB to support the finalization of the rule and emphasize the importance of transparency and consistency in developing the agency’s cost-benefit analyses for rulemakings. Following the June proposal, GEI issued a statement, presented [testimony](#) at the agency’s public hearing on the rule, launched an advocacy [webpage](#). The Chamber also submitted [coalition comments](#) in conjunction with several other trades by the August deadline. The rule is expected to be finalized in early December. **Please contact**

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with any questions.

U.S.-Mexico Water Market Intelligence Roundtable

The U.S. Chamber of Commerce, together with the Arizona Chamber of Commerce and Industry, the San Diego Regional Chamber of Commerce, and the Water Environment Federation, co-convened a virtual market intelligence roundtable on October 22, 2020 to ease market entry and bolster exports for U.S. water technologies, products, and services along the U.S.-Mexico border. The audience, composed of approximately 90 leading company executives and water practitioners, interagency leaders, and Mexican decision makers, explored how stakeholders can support increased private sector engagement to seek solutions. Key next steps include leverage the upcoming EPA public stakeholder meeting to carry key messages from this session forward, including the need for more private sector engagement in projects on both sides of the border; collaborate with our coalition of state and local chambers and

member companies along the border, and with members of Congress and the administration on additional policies to address water and wastewater solutions; continue working with U.S. government agencies to ensure that businesses have access to the latest project opportunities and funding; follow up with Mexican interlocutors to build relationships with the U.S. private sector; and explore opportunities for lower-cost, low-tech solutions, including green infrastructure. **Please contact** Redacted - PII **with any questions.**

Read-Ahead Materials

December 9, 2020



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Environment & Agriculture

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Regulatory Scorecard

REGULATORY SCORECARD	
RULES FINALIZED & IN LITIGATION	
CEQ	NEPA Modernization
EPA	ACE
EPA	MATS
EPA	Methane NSPS
EPA	NSR PEA Guidance
EPA	NESHAP LEAN
EPA/ACOE	Navigable Waters/WOTUS
RULES/ACTIONS EXPECTED TO BE FINALIZED AFTER 12/07	
ACOE	Nationwide Permits
DOI	ANWR Lease Sale/Seismic
DOI	BLM Lease Sale EIS RODs
DOI	ESA Critical Habitat Designations
DOI	ESA Definition of Habitat
DOI	MBTA Incidental Take
EPA	Aircraft GHG Rule
EPA	Maui Guidance
EPA	NSR PEA Rule
EPA	Ozone NAAQS Rule (est. Dec. 18th)
EPA	Benefit-Cost Analysis Rule(est. Dec. 9th)
RULES FINALIZED IN CRA WINDOW	
CEQ	NEPA Modernization
DOE	LNG Exports Review under NGA
DOL	ESG Rule
EPA	Coal Combustion Residuals Rule - Part B
EPA	CERCLA Financial Assurance (Electric Utilities, Chemicals, Coal and Petroleum Products)
EPA	Effluent Limitation Guidelines
EPA	Fuels Regulatory Streamlining
EPA	Guidance Rule
EPA	Methane NSPS
EPA	Once-In, Always-In
EPA	Science Transparency
FERC	PURPA Modernization Rule

Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Endangered Species Act Reform

On November 18th, the Department of the Interior (DOI) jointly with Department of Commerce (DOC) sent to OMB their draft final rule proposal that would add a definition of “habitat” to the regulations governing the listing of endangered and threatened species and designation of critical habitat under the Endangered Species Act (ESA). In the recent Supreme Court ruling in *Weyerhaeuser Co. v. U.S. FWS*, the court explained that any area that meets the narrow category of critical habitat must logically be habitat. However, neither agency had yet established a definition for “habitat” although the statute provides a definition for “critical habitat.” The agencies provide a definition and propose an alternative. The Chamber [submitted comments](#) on the proposed rule suggesting that ‘habitat’ should only include places where the existing attributes currently exist to preclude agencies from requiring a place to be modified to support a species.

In a separate rulemaking submitted to OMB on November 12th, DOI will finalize clarifications to the agency’s consideration of benefits of both including and excluding specific habitat segments in critical habitat designations. **Please contact Christopher Guith** Redacted - PII **or** Redacted - PII **with any questions.**

Electric Sector Supply Chain Activities

On May 1, 2020, the White House issued an [executive order](#) (EO) which seeks to limit the suppliers of electric grid equipment and essentially prohibits the purchase and use of such equipment from countries deemed adversarial to domestic grid security. The Chamber has been engaged with its electric utility and impacted supply chain members, along with the Edison Electric Institute (EEI), since this order’s issuance, and has developed a Principles document working with the Chamber’s supply chain membership to guide interactions with the Department of Energy (DOE) and the Administration. On July 8, 2020, DOE issued and had published in the Federal Register a [Request for Information \(RFI\)](#) seeking information to assist DOE’s understanding of the current practices employed by the energy industry to identify and mitigate vulnerabilities in supply chain components, and on August 24, 2020, the Chamber submitted comprehensive [comments](#) responsive to the RFI. On September 17, 2020, the Federal Energy Regulatory Commission (FERC) weighed in with the issuance of its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its informal Supply Chain Working Group (the “SCWG”), the Chamber submitted [comments](#) responsive to FERC’s NOI on November 23, 2020. Most recently, the Chamber convened its SCWG together with EEI to provide feedback on EEI’s Model Procurement Contract Language Addressing Cybersecurity Supply Chain Risk, which is intended to facilitate compliance with reliability standard NERC CIP-013-1. The Chamber will be working with its SCWG to provide additional feedback to EEI on this model contract language. **Please contact** Redacted - PII

Redacted - PII **with any questions.**

Energy Innovation Legislation

As the 116th Congress nears a close, the Chamber is engaged in a last-minute push on Capitol Hill to advance legislative efforts that aim to support the research, development, and deployment of innovative energy technologies, including advancements in battery storage technology, advanced nuclear, energy efficiency, and carbon capture and sequestration (CCS) from fossil fuel generation sources. Through formal letters and informal advocacy efforts over the past two years, the Chamber has repeatedly expressed its support for the introduction, markup, and ultimate passage of many related pieces of legislation. Though the Chamber strongly supported the incorporation of language from the bipartisan Nuclear Energy Leadership Act (S. 903) in the FY2021 National Defense Authorization Act (NDAA), that language was not included in the NDAA conference report issued December 3, 2020. On the broader innovation front, the Chamber led a [letter](#) to House leadership, with nearly 40 trade group and association signatures, urging the advancement of the “Clean Energy Jobs and Innovation Act,” H.R. 4447, which was considered and passed by the House during the week of September 21. H.R. 4447 includes many of the energy innovation initiatives supported by the Chamber. The Chamber sent all House members a [letter](#) generally supportive of this package’s passage. As of the finalization of this Read-Ahead, informal pre-conferencing has continued to work on the integration of H.R. 4447 with the Senate’s S. 2657, the “American Energy Innovation Act.” The Chamber and its allies continue to advocate for the attachment of comprehensive energy innovation legislation onto must-pass end-of-year legislation. **Please contact** Redacted - PII

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with questions.

EPA MATS Rule

On April 16, 2020, the EPA issued its final rule modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA’s proposal to eliminate the “appropriate and necessary” finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the “appropriate and necessary” finding, while retaining the compliance obligations therein. On Friday, May 22 the MATS final rule’s publication in the *Federal Register* was met by its first lawsuit – now stayed – which challenges the retention of the MATS regulations now that the “appropriate and necessary” finding has been eliminated. Additional lawsuits were filed by environmental, industry, and other groups to challenge the EPA’s removal of the “appropriate and necessary” finding. The Chamber is planning to participate as an amicus, with other interested stakeholders, in these pending lawsuits, which may be delayed or otherwise impacted if a Biden Administration moves promptly to revisit the MATS rule. **Please contact** Redacted - PII

Redacted - PII

with any questions.

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the “one-mile rule” used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities’ access to wholesale markets, among other things. Concurrent with FERC’s finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC’s final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. On September 18, 2020, the Solar Energy Industries Association filed a petition for review of FERC’s order in the U.S. Court of Appeals for the Ninth Circuit, but requested a 60-day abeyance in order to provide FERC additional time to act on pending requests for rehearing. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020, clearing the way for the Ninth Circuit litigation to proceed. The Chamber anticipates playing a role, with industry allies, in defense of PURPA’s modernization. **Please contact**

Redacted - PII

with any questions.

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Dakota Access Pipeline

In response to recent rulings by the U.S. District Court for the District of Columbia requiring the shut down and completion of an environmental review of the Dakota Access pipeline (DAPL), July 13 the U.S. Chamber and allied organizations jointly filed an amicus brief at the U.S. Court of Appeals for the D.C. Circuit in support of DAPL’s emergency motion to stay the district court’s shut down order. The U.S. filed its own appeal and emergency motion for a stay that same day. On July 14, the D.C. Circuit issued an order administratively staying the decision to shut down the pipeline while the Court considers DAPL and the Government’s motions. On August 5th, the D.C. Circuit made permanent its ruling that the pipeline could continue operating while the appeals court hears arguments on the underlying case. The court further decided to expedite the briefing schedule on the government's appeal on the merits. On September 2, 2020 U.S. Chamber and industry groups submitted amicus brief urging the D.C. Circuit to reverse lower court decision. The U.S. Court of Appeals for the D.C. Circuit heard oral argument on November 4, 2020, in the appeal from a federal district court decision that would require an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for a federal easement needed for part of the pipeline. The district court also had ordered the pipeline to shutdown until the NEPA review is completed. On appeal, a D.C. Circuit motions panel issued an order staying the shutdown order, holding that the district court had failed to make the necessary findings for an injunction. During the oral argument on the merits, the judges questioned the adequacy of the Army Corps’ NEPA analysis. At the same time, the judges also pushed back on the Tribal groups who challenged the NEPA review, which might suggest the court believes a separate injunction would be needed to block the pipeline

operations, not just the vacatur of the easement. **Please contact Christopher Guith**

Redacted - PII with any questions.

Migratory Bird Treaty Act

On November 9th, the U.S. Fish and Wildlife Service submitted for OMB review a final rulemaking that if codified would update FWS's interpretation that the Migratory Bird Treaty Act's ("MBTA") prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. On December 14th, the Chamber along with other trade association partners will be meeting with OMB to discuss the final rule and express our support for the update. In February, the U.S. Fish and Wildlife Service issued a [supplemental proposed rule](#) and in July, FWS issued a [draft environmental impact statement](#) including an alternative that would exclude incidental take of birds from commercial activities. **Please contact Christopher Guith** Redacted - PII with any questions.

Nationwide Permit Coalition Comments

The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer's [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community's broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation. **Please contact** Redacted - PII

Redacted - PII or Christopher Guith Redacted - PII with any questions.

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy — energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others – to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- **DOE NEPA Final Rule on LNG Terminals** – On December 4, 2020, DOE finalized their NEPA rulemaking that would narrow the required analysis under NEPA for LNG exports and remove the requirement for NEPA analysis for LNG imports. For exports, DOE made two primary changes: (1) making the interpretation that the Natural Gas Act (NGA) authorizes LNG exports to Free Trade Agreement (FTA) countries limiting the discretion under NEPA for approvals and (2) limiting the consideration of effects for LNG exports to non-FTA countries to those occurring at or after the point of export. For imports, DOE also interprets the NGA to require authorization of imports so the agency removed the reference to NEPA authorizations from their implementing rule. The Chamber's coalition comments on the proposal can be found [here](#).

- **DOT Proposed Update to NEPA Procedures** - On November 23, 2020, the U.S. Department of Transportation's (DOT) proposed a rule to update and codify its internal order establishing the responsibilities and procedures for complying with the National Environmental Policy Act (NEPA). DOT has proposed updating their procedures consistent with the Council on Environmental Quality's (CEQ's) final rule updating its NEPA procedures; incorporating provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); Moving Ahead for Progress in the 21st Century Act (MAP-21); and the Fixing America's Surface Transportation (FAST) Act related to the Department's environmental review process; and updating the list of the Department's categorical exclusions consistent with the CEQ's regulations implementing NEPA. The Chamber will be submitting comments on the proposed rule by the December 23, 2020 deadline. **Please contact** [Redacted - PII] **with any questions.**
- Five lawsuits have been filed by environmental groups and state attorneys general challenging the CEQ NEPA final rulemaking. The Chamber is currently collaborating with eight other trade associations on the best way to provide legal support for the NEPA updates and has intervened or filed to intervene in four of the five cases. **Please contact** [Redacted - PII] **with any questions.**

FIPSC Proposal to Create Sector for Mining

On November 27th, the Federal Permitting Improvement Steering Council (FIPSC) proposed to add mining as a sector with infrastructure projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act (FAST-41). The new mining category would focus on minerals, ore, and raw materials used for energy production, manufacturing, or other purpose. It would not include conventional energy production such as coal and oil & gas as they are already covered under an existing FIPSC sector. The addition of mining as a FAST-41 sector would allow a qualified mining infrastructure project to become a FAST-41 covered project. The Chamber will be submitting comments on the proposed rule by the December 28, 2020 deadline. **Please contact** [Redacted - PII] **with any questions.**

DFC Nuclear Policy Change

On June 10th, the International Development Finance Corporation (DFC) announced a change in its policy, rescinding its ban on financing nuclear project. For two years, the Chamber has worked with DFC and its predecessor, OPIC, to change its near-sighted policy and released a statement supporting this important change. **Please contact Christopher Guith** [Redacted - PII] **with any questions.**

New York Section 126 Petition

On October 29, 2019, the State of New York, the State of New Jersey, and the City of New York filed a petition for review with the Court of Appeals for the D.C. Circuit challenging the EPA's denial of New York's "good neighbor" petition under Section 126 of the Clean Air Act. The Chamber has led a coalition of trade associations and companies, identified as the Air Stewardship Coalition (ASC), that intervened in this case and filed a brief on March 5, 2020,

supporting the EPA's denial of New York's petition targeted at nearly 350 facilities across 9 states. On July 14, 2020, the Court of Appeals for the D.C. Circuit issued its [decision that](#) rejects EPA's bases for denying New York's Section 126 petition and remanded the dispute back to EPA for action consistent with the decision. The D.C. Circuit's opinion rested on its determination that EPA failed to rationally explain the allocation of the burden to support the imposition of additional pollution controls on the targeted sources. Importantly, the Chamber's brief had provided and argued additional grounds for rejecting New York's petition, but EPA did not adopt them. The majority of the three-judge panel acknowledged our arguments but did not consider them because EPA did not rely on them. In a helpful concurring opinion, Judge Griffith adopted our argument regarding the appropriate scope of a petition under Section 126 to an actual "source or group of sources," and suggested that EPA could rely on the section's more limited scope in a future case. The Chamber is continuing to work with its partners in the ASC to encourage the EPA to promptly deny New York's petition on remand, and is moving forward with the development of comments focused on EPA's issuance of a revised Cross-State Air Pollution Rule (CSAPR) update on October 15, 2020. Chamber/ASC comments responsive to the update proposal will be submitted by the December 14, 2020 comment deadline. **Please contact** [Redacted - PII] **with any questions.**

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

In September 2018, EPA announced a major rulemaking to modify fuel economy and greenhouse gas standards for light duty vehicles (cars, SUVs, and trucks). The proposal rescinded California's special Clean Air Act waiver to set more stringent standards than the federal government and proposed to freeze fuel economy requirements beginning in model year 2021. In response, the Global Energy Institute published a report, "Divided Highway," that called for preservation of a single national auto market, and a middle ground compromise the Trump Administration proposal and the Obama-era standards.

In October 2019, the Administration finalized rescission of California's CAA waiver, and on March 31st, EPA and the Department of Transportation finalized the revised standards, which require 1.5 percent year-over-year increases in fuel economy through model year 2026. GEI President Marty Durbin released a [statement](#) commending the agencies for striking a balanced approach in the final rule. Litigation is now underway in both rulemakings. On September 16th, the Chamber filed an amicus brief supporting the Administration's assertion of federal preemption authority in the waiver case. **Please contact** [Redacted - PII] **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019 the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration's Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA's CPP withdrawal and concurrent

promulgation of the ACE rule. The Chamber's [brief](#), submitted primarily in defense of the EPA's repeal of the CPP, was submitted on July 16, 2020. On October 5, 2020, the Chamber hosted a moot court to help prepare Lindsay See, Solicitor General of West Virginia, for the oral argument, as she would argue the case on behalf of the states, industry groups, and labor unions aligned with the Chamber. On October 8, 2020, the Court held approximately 9 hours of oral argument focused on the merits of the EPA's repeal of the Clean Power Plan (CPP) and its replacement of that regulation with the ACE Rule. As evidenced by the extraordinary length of the hearing, which greatly exceeded the argument time allocated in advance, the panel of judges was highly engaged with each of the many lawyers who presented their positions before the Court. The case was argued before Judges Millett (Obama appointee), Pillard (Obama appointee), and Walker (Trump appointee). An order in this proceeding would ordinarily be anticipated in early 2021, but the Biden Administration is anticipated to take immediate action to reconsider or withdraw the ACE Rule, thereby inserting some doubt as to whether a court decision will ultimately be issued. **Please contact** Redacted - PII
Redacted - PII **with any questions.**

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hardrock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings *via* a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. **Please contact** Redacted - PII **with any questions.**

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020. Separately, EPA guidance, for which the Chamber had advocated, intended to clarify the future implementation of the “functional equivalent” test, is currently being reviewed at OMB. This guidance’s public release, for an ensuing 30-day public comment period, is reported as imminent. **Please contact** *

Redacted - PII

with any questions.

HFC Phasedown Legislation

Senate Committee on Environment and Public Works (EPW) majority and minority have agreed to [compromise](#) language on the American Innovation and Manufacturing (AIM) Act. The AIM Act is being considered as part of a package of legislation that will likely be part of the broader climate and energy innovation package and/or the omnibus appropriations agreement during the coming week. The Chamber, working with coalition of stakeholders, sent a [letter](#) thanking EPW leaders for the important work and urging passage. **Please contact** Redacted - PII

Redacted - PII **with any questions.**

Marine Debris and Recycling

The Senate passed the House amended version of S.1982, the Save Our Seas 2.0 Act by unanimous consent on December 1, 2020. The Chamber, together with the American Chemistry Council and the National Association of Manufacturers [issued a statement](#) calling for the president's signature. The legislation is intended to address national and global challenges related to marine debris and plastic waste. **Please contact** Redacted - PII

Redacted - PII **[with any questions.](#)**

Ozone and Particulate Matter NAAQS Review

On November 4, 2020, EPA submitted to OMB their final action for the review of the current particulate matter (PM) National Ambient Air Quality Standards (NAAQS). The rulemaking is expected to be finalized the week of December 7th. EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM2.5 NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m3 to 12 ug/m3. In April of this year, EPA proposed to retain the existing particulate matter standards. The Chamber testified at the EPA PM NAAQS public hearing supporting EPA's retention of the current standards and submitted more detailed coalition comments on the proposal. The Chamber, along with several partner associations, met with OMB on November 16th to support EPA's proposal to retain the current PM NAAQS standards. A similar sequence is underway regarding the Ozone NAAQS. On August 14th, EPA issued a rulemaking proposing to retain the current Ozone standards at its 2015 level of 70 parts per billion, requesting comment on the proposal by October 1, 2020. The Chamber issued a [statement](#) on the ozone proposal, testified at EPA's public hearing on September 1st, and submitted public comments with a coalition on the ozone rule. The rule is expected to be finalized sometime in December. **Please contact** *

Redacted - PII **with any questions.**

EPA PFAS Interim Guidance

On July 27, 2020, EPA submitted for OMB review [interim guidance on PFAS waste disposal and destruction](#). EPA prepared the guidance in response to an amendment to the FY2020 National Defense Authorization Act that requires EPA to issue interim guidance on disposal and destruction of PFAS materials and update it every three years. The Chamber held a virtual meeting with OMB and EPA on September 9, 2020, in which the timeline for finalizing was raised. There will be a 30-day comment period once OMB concludes its review. The NDAA requires that the guidance is completed by the end of the year.

The [Toxics in Packaging Clearinghouse](#) formed in 1992 to promote the Model Toxics in Packaging Legislation, has a [request for comments](#) out on revising their model legislation, including potential restrictions on PFAS. Please provide your feedback as soon as possible on whether the Chamber provided comments on August 24, 2020.

The Chamber recently sent a coalition [letter](#) urging the committee chairs to remove language proposed in the FY 21 National Defense Authorization Act from any final NDAA package. The proposed TRI language was not included, and the DoD procurement restrictions apply only to PFOA and PFOS and a few products. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Resilience Revolving Loan Fund

The Senate will likely hotline the of the Senate companion to the Resilience Revolving Loan Fund Act sometime during the coming weeks. The bill would establish a resilience revolving loan fund, similar to the drinking water SRF that would offer low interest loans to communities to better prepare them for a wide range of possible disasters, including droughts. The Chamber sent a coalition letter urging immediate action. The Chamber also developed [resilience principles](#) to guide how to advocate for building modern, resilient infrastructure policies and used them to evaluate the Invest in America Act, reauthorizing federal surface transportation programs, H.R. 2, the broader House Democratic infrastructure package, and the recent report from the House Select Committee on the Climate Crisis. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

TSCA Risk Management

On September 8th, EPA [announced](#) a series of meetings and stakeholder engagement opportunities related to forthcoming risk management actions under the revised Toxic Substances and Control Act (TSCA). This effort follows a recently filed petition by a coalition of trade groups including the Chamber requesting that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. The Chamber expects to be an active participant in the EPA engagement on this issue and welcomes member input on the issue. **Please contact** [Redacted - PII]

with any questions.

Stormwater Innovation Principles

The Chamber and the coalition held a meeting with the EPA stormwater and NPDES permitting teams on August 20, 2020 to discuss collaboration opportunities. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Water Infrastructure and Policy Priorities

The Chamber sent a [letter](#) to all Members of Congress urging passage of the Water Resources Development Act before it expires on September 30, 2020 and to include our water policy priorities in infrastructure legislation. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber is joining a coalition to the Senate Committee on Environment and Public Works providing recommendations on the implementation of the rule. **Please contact**

Redacted - PII

with any questions.

EPA Scientific Transparency

On May 18, 2020, the Chamber [filed comments](#) responding to EPA’s [supplemental proposal](#) modifying its 2018 proposed regulation aimed at increasing the transparency of scientific data and information used in regulatory decision-making. **Please contact**

Redacted - PII

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with any questions.

EPA Cost-Benefit Analysis

On October 21, 2020, EPA submitted the final rule to OMB that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, we have met with OMB to support the finalization of the rule and emphasize the importance of transparency and consistency in developing the agency’s cost-benefit analyses for rulemakings. Following the June proposal, GEI issued a statement, presented [testimony](#) at the agency’s public hearing on the rule, launched an advocacy [webpage](#). The Chamber also submitted [coalition comments](#) in conjunction with several other trades by the August deadline. The rule is expected to be finalized in early December. **Please contact**

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with any questions.

U.S.-Mexico Water Market Intelligence Roundtable

The U.S. Chamber of Commerce, together with the Arizona Chamber of Commerce and Industry, the San Diego Regional Chamber of Commerce, and the Water Environment Federation, co-convened a virtual market intelligence roundtable on October 22, 2020 to ease market entry and bolster exports for U.S. water technologies, products, and services along the U.S.-Mexico border. The audience, composed of approximately 90 leading company executives and water practitioners, interagency leaders, and Mexican decision makers, explored how stakeholders can support increased private sector engagement to seek solutions. Key next steps include leverage the upcoming EPA public stakeholder meeting to carry key messages from this session forward, including the need for more private sector engagement in projects on both sides of the border; collaborate with our coalition of state and local chambers and

member companies along the border, and with members of Congress and the administration on additional policies to address water and wastewater solutions; continue working with U.S. government agencies to ensure that businesses have access to the latest project opportunities and funding; follow up with Mexican interlocutors to build relationships with the U.S. private sector; and explore opportunities for lower-cost, low-tech solutions, including green infrastructure. **Please contact** Redacted - PII **with any questions.**

Read-Ahead Materials

February 17, 2021



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Environment & Agriculture

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Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Regulatory Process and Cost-Benefit Analysis Overhaul

As anticipated, the Biden Administration issued a regulatory freeze memo on day one that froze all of the Trump Administration's unfinished regulatory actions, including 66 rules that were under White House Office of Information and Regulatory Affairs (OIRA) review and an additional 135 rulemakings that were sent to the federal register but were unpublished.

President Biden has issued dozens of executive actions including a memo to all agencies called, "[Modernizing Regulatory Review](#)" that calls for updating the process that OIRA has followed for three decades when reviewing agencies' draft rulemakings. The memo also directs OIRA to update their regulatory cost-benefit guidelines that agencies are to follow when developing rulemakings, last issued in 2003, and for OIRA to focus on promoting rules that would yield significant benefits for disadvantaged communities.

In parallel, Biden's Climate Science order directed agencies to review every rulemaking issued during the Trump Administration to determine whether to suspend, revise, or rescind. The White House provided a preliminary list of [104 Trump rules](#) as their top priorities for agencies to review.

Also of note, EPA's general counsel issued a [memo](#) to DOJ requesting that DOJ "seek and obtain abeyances or stays of proceedings in pending litigation seeking judicial review." **Please contact** Redacted - PII **with any questions.**

Updating the Social Cost of Carbon

As part of the Climate Science order issued on January 20, 2021, the President directed the interagency working group on the social cost of greenhouse gases to update the social costs of carbon, methane, and nitrous oxide. These social climate values were first used in regulatory cost-benefit analysis for regulations issued in the Obama Administration by assigning a dollar value to the benefits of avoiding future projected climate change damages. The Obama Social Cost of Carbon (SCC) included both domestic and international benefits of avoided damages, while the Trump SCC focused on just domestic damages relying on OMB's benefit-cost analysis guidance. President Biden directed his administration to replace the Trump SCC with interim values by February 19th and finalize the values by January 2022. The revisions to the SCC will likely incorporate the international values and lower discount rates, which could increase the benefit estimates in rulemakings substantially, ultimately supporting more stringent regulatory actions. These estimates would primarily be used in federal regulation, but also in federal procurement, permitting decisions, and loans. The Chamber expects to be active in engaging with the administration on this issue and signed-on to a coalition letter requesting the interagency working group to engage the trades as the administration revised the interim and final values. **Please contact** Redacted - PII **with any questions.**

Federal Lands Leasing Ban

On January 27th, 2020, President Biden issued [Executive Order 14008](#), which among other things, indefinitely bans new oil and natural gas leasing on federal lands and waters. This action follows on the January 2^{0th}, [Secretarial Order](#) revoking normal delegation of authority for 60 days to Interior's bureaus of the authority to issue new leases, lease amendments, permits, etc. During this indefinite ban, the EO directs Interior to reassess the fossil fuel leasing programs as well as the respective royalty processes.

Federal lands and waters make up 22% of total us oil production and 12% total natural gas production. The current ban has created significant uncertainty for operators and curtailed investment in future exploration and production. Partnering with our Federation members, the Chamber will continue to aggressively explain how these policies are nearsighted and counterproductive to growing the economy and reducing greenhouse gas emissions. **Please contact Christopher Guith** Redacted - PII **with any questions.**

Endangered Species Act Reform

On December 16, 2020, the Department of the Interior (DOI) jointly with Department of Commerce (DOC) issued their t [final rule](#) oposal that wouldadd a definition of "habitat" to the regulations governing the listing of endangered and threatened species and designation of critical habitat under the Endangered Species Act (ESA). The final rule was effective on January 15, 2021 avoiding the Biden freeze memo that could have extended the effective date of the rule. In the recent Supreme Court ruling in *Weyerhaeuser Co. v. U.S. FWS*, the court explained that any area that meets the narrow category of critical habitat must logically be habitat. However, neither agency had yet established a definition for "habitat" although the statute provides a definition for "critical habitat." The final definition includes both temporal and physical qualifying elements, but is a broader definition than the proposal as it would include physical places that currently or periodically support a species. The Chamber [submitted comments](#) on the proposed rule suggesting that 'habitat' should only include places where the existing attributes currently exist to preclude agencies from requiring a place to be modified to support a species.

In a separate [final rule](#) issued on December 18, 2020, DOI finalized clarifications to the agency's consideration of benefits of both including and excluding specific habitat segments in critical habitat designations. The final rule was effective on January 19, 2021, also avoiding the Biden freeze memo that would have extended the effective date of the rule. **Please contact**

Christopher Guith Redacted - PII
Redacted - PII **with any questions.**

Electric Sector Supply Chain Activities

On January 20, 2021, one of President Biden's first [executive orders](#) (EOs) suspended for ninety (90) days the effectiveness of the Trump Administration's May 1, 2020, [executive order](#) which sought to limit the suppliers of electric grid equipment and prohibit the purchase and use of such equipment from countries deemed adversarial to domestic grid security (the "BPS EO").

Following this suspension, we received confirmation from the Department of Energy (DOE) that the suspension also applies to the [Prohibition Order](#) that DOE had issued on December 17, 2020. That Prohibition Order sought to specifically ban numerous categories of equipment, firmware, and software at or within bulk power system facilities that serve or support critical defense facilities. Given these recent developments, the Chamber is continuing to engage with its electric utility and impacted supply chain members, along with other stakeholders, to provide significant input to DOE as it reevaluates the BPS EO, the Prohibition Order, and what additional activities DOE may undertake with respect to the bulk power system supply chain. Among other outreach, the Chamber is planning to submit a letter to the Secretary of Energy, key White House officials, and relevant DOE staff that leverages some of the points we previously filed with DOE in [comments](#) responsive to the Request for Information DOE issued in response to the BPS EO.

On a separate track, the Federal Energy Regulatory Commission (FERC) on September 17, 2020, issued its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its members, the Chamber submitted [comments](#) responsive to FERC's NOI on November 23, 2020. Further action by FERC responsive to the NOI is anticipated. **Please contact** Redacted - PII **with any questions.**

Energy Innovation Legislation

In late December, the Energy Act of 2020 was included in omnibus appropriations legislation that was signed into law just before adjournment of the 116th Congress. Passage of the legislation completed work on one of the Chamber's top legislative priorities in 2020. The Chamber worked closely with members of Congress and key committee staff on both sides of the aisle to craft and mobilize support for the bill and the dozens of individual pieces of legislation that were included in it. In response, Marty Durbin issued a [statement](#) noting that successful passage of the Energy Act proves "there is common ground on which all sides of the debate can come together to begin to address climate change, promote American technological leadership, and foster continued economic growth." In the weeks and months ahead, the Chamber will work to ensure the individual programs and activities authorized by the Energy Act are fully funded through the appropriations process. **Please contact** Redacted - PII **with questions.**

EPA MATS Rule

On April 16, 2020, the EPA issued its [final rule](#) modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA's proposal to eliminate the "appropriate and necessary" finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the "appropriate and necessary" filing, while retaining the compliance obligations therein. On January 20, 2021, an

early Biden Administration [Executive Order](#) committed to review a significant number of EPA EPA rules and regulations, including the MATS final rule published on May 22, 2020. While lawsuits are also pending on this rule, we anticipate that the Biden Administration’s review of this rule could moot some of that litigation through the reinstatement of the “appropriate and necessary” finding noted above. However, EPA revisions to this final rule could provide challenges for the remaining coal fleet if aggressive modifications to the accompanying Residual Risk and Technology Review are pursued. **Please contact** Redacted - PII Redacted - PII **with any questions.**

FERC Pipeline Certification Regulations

On April 19, 2018, the Federal Energy Regulatory Commission (FERC) issued a [Notice of Inquiry](#) (NOI) initiating a review of its 1999 interstate natural gas Certificate Policy Statement, which the Commission utilizes to guide its evaluation of natural gas pipeline infrastructure projects. The Global Energy Institute submitted [comments](#) responsive to this NOI on July 25, 2018, and the docket has been largely dormant since. The NOI docket (PL18-1-000) is now listed on the agenda for FERC’s next monthly open meeting, which will be held on February 18, 2021. This will be the first such meeting with Commissioner Rich Glick presiding in his new role as Chairman of FERC. Commissioner Glick, during his tenure at FERC, has routinely criticized the agency’s consideration of greenhouse gas emissions in connection with its pipeline certification decisions. **Please contact** Redacted - PII **with any questions.**

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the “one-mile rule” used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities’ access to wholesale markets, among other things. Concurrent with FERC’s finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC’s final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020. A number of lawsuits have now been filed at the appellate court level challenging FERC’s final rule on PURPA. The Chamber anticipates playing a role, with industry allies, in defense of PURPA’s modernization. **Please contact** Redacted - PII Redacted - PII **with any questions.**

Migratory Bird Treaty Act

On January 7, 2021, the U.S. Fish and Wildlife Service finalized a rulemaking that codified an update to the FWS’s interpretation that the Migratory Bird Treaty Act’s (“MBTA”) prohibitions

on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. As the final rule was not effective until after January 20, 2021, the Biden administration issued an extension of the effective date of the rule out to March 8, 2021 and has requested comment on the rule by March 1, 2021. **Please**

contact Christopher Guith [Redacted - PII]
[Redacted - PII] **with any questions.**

Nationwide Permit Coalition Comments

The Army Corps of Engineers finalized updates to the Nationwide Permit program on January 13, 2021. The effective date of the rule is not until March 15th, which would allow the Biden administration to extend the effective while it reconsiders the rule. The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer's [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community's broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation. **Please contact** [Redacted - PII] **or Christopher Guith** [Redacted - PII] **with any questions.**

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy — energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others – to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- **Revoked 2017 Permit Streamlining EO** – The Biden climate science executive order revoked the Trump Executive Order 13807, the One Federal Decision order that helped expedite federal environmental reviews and the permitting process for infrastructure projects. The Biden order directed OMB and the Chair of the CEQ to jointly consider whether to recommend that a replacement order be issued.
- **Reinstated Obama Era GHG NEPA Guidance** – The Biden climate science executive order also rescinded the June 2019 draft guidance on the consideration of GHG emissions in NEPA. The order reinstated the Obama era GHG NEPA guidance issued in August 2016.
- **DOE NEPA Final Rule on LNG Terminals** – On January 4, 2021, DOE's final NEPA rulemaking became effective. The [final rule](#) would narrow the required analysis under NEPA for LNG exports and remove the requirement for NEPA analysis for LNG imports. For exports, DOE made two primary changes: (1) making the interpretation that the Natural Gas Act (NGA) authorizes LNG exports to Free Trade Agreement (FTA) countries limiting the discretion under NEPA for approvals and (2) limiting the consideration of effects for LNG exports to non-FTA countries to those occurring at or after the point of export. For imports, DOE also

interprets the NGA to require authorization of imports so the agency removed the reference to NEPA authorizations from their implementing rule. The Chamber's coalition comments on the proposal can be found [here](#).

- Five lawsuits have been filed by environmental groups and state attorneys general challenging the CEQ NEPA final rulemaking. The Chamber is currently collaborating with eight other trade associations on the best way to provide legal support for the NEPA updates and has intervened or filed to intervene in all five cases. **Please contact** *
Redacted - PII **with any questions.**

FIPSC Proposal to Create Sector for Mining

On January 8, 2021, the Federal Permitting Improvement Steering Council (FIPSC) finalized an action that added mining as a sector with infrastructure projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act (FAST-41). The new mining category would focus on minerals, ore, and raw materials used for energy production, manufacturing, or other purpose. It would not include conventional energy production such as coal and oil & gas as they are already covered under an existing FIPSC sector. The addition of mining as a FAST-41 sector would allow a qualified mining infrastructure project to become a FAST-41 covered project. The Chamber submitted [comments](#) on the proposed rule supporting the addition of the mining sector. **Please contact** Redacted - PII **with any questions.**

DFC Nuclear Policy Change

On June 10th, the International Development Finance Corporation (DFC) announced a change in its policy, rescinding its ban on financing nuclear project. For two years, the Chamber has worked with DFC and its predecessor, OPIC, to change its near-sighted policy and released a [statement](#) supporting this important change. **Please contact Christopher Guith**
Redacted - PII **with any questions.**

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

The years-long negotiations between the Federal government, California, and automakers over fuel economy and greenhouse gas (GHG) standards is expected to continue in the Biden Administration. Since 2019, the Chamber has become more active in engaging in these issues, actively lobbying for middle-ground solutions that deliver steady fuel economy gains, preserve a single national market for auto sales and unite stakeholders.

In 2020, the Trump Administration finalized rules known as "SAFE 1" (rescinding California's special Clean Air Act waiver to set standards more stringent than the federal government) and "SAFE 2" (revised passenger vehicle fuel economy standards for model years 2021-2026). The Biden Administration has committed to reconsidering both rules, with formal action expected in the spring or summer of 2021. Meanwhile, on February 8, 2021, the D.C. Circuit granted the Biden Administration's request to place litigation regarding the SAFE 1 rule in abeyance. The

Chamber intends to remain engaged on this issue and seek a middle-ground solutions that are acceptable to its broad membership.

Please contact [Redacted - PII] **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019 the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration's Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA's CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber's [brief](#), submitted primarily in defense of the EPA's repeal of the CPP, was submitted on July 16, 2020. On October 8, 2020, the Court held approximately 9 hours of oral argument focused on the merits of the EPA's repeal of the Clean Power Plan (CPP) and its replacement of that regulation with the ACE Rule.

On January 19, 2021, the Court the U.S. Court of Appeals for the D.C. Circuit issued a 2-1 [opinion](#) vacating the Trump EPA's rules rescinding the CPP and replacing it with the ACE Rule. The majority opinion held that the Clean Air Act does not constrain EPA to "inside the fence" mechanisms to achieve emissions reductions; greenhouse gases from electric generating units in this instance. The order further rejected the replacement ACE Rule because it was premised on what the court viewed as an overly constrained view of the agency's authority. The Court remanded the rulemaking to EPA for the agency to reassess how it regulates greenhouse gas emissions from power plants. Judges Millett and Pillard (both Obama appointees) supported the full opinion, while Judge Walker (a Trump appointee) wrote a statement concurring in part and dissenting in part.

More recently, on February 12, 2021, EPA filed a motion to partially stay the D.C. Circuit's mandate, which dictates when EPA would be required to implement the court's order. The motion stated that EPA understands the Court's decision as leaving neither the CPP nor ACE rules in effect, and thus no EPA regulation in place with respect to greenhouse gas emissions from power plants. The motion also states that EPA is therefore obligated to propose and promulgate a new rulemaking under Clean Air Act Section 111(d) to replace such regulation(s). The motion also noted that the emission reductions that the CPP was projected to achieve have already been achieved by the power sector.

Please contact [Redacted - PII] **with any questions.**

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hardrock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings *via* a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. The Administration did not include this final rule in its non-exclusive listing of EPA actions to review as part of President Biden’s [Executive Order](#) on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Please contact** Redacted - PII Redacted - PII **with any questions.**

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020.

Separately, EPA proposed in December 2020 a guidance document that identifies one additional factor for consideration when evaluating whether and how to perform a “functional equivalent” analysis; specifically the “design and performance of the system or facility from which the pollutant is released.” EPA finalized this [guidance](#) on January 14, 2021. While a guidance document such as this does not have the force and effect of law, it is likely that the EPA may reevaluate this approach with respect to the “functional equivalent” analysis. **Please contact** [Redacted - PII] **with any questions.**

HFC Phasedown Legislation

There are two issues on our agenda following-up on the enactment of the The American Innovation and Manufacturing (AIM) Act: 1) President Biden’s January 27, 2021 executive order on climate priorities directed the Secretary of State to prepare a package within 60 days to send the Kigali amendment to the Senate for ratification. The Chamber is re-engaging a coalition of our member trade associations to support ratification. 2) EPA has 270 days to promulgate several rules, including allocations to implement the AIM Act. The Chamber will work with our members to ensure the business community’s priorities are included in the final regulation.

Please contact [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Chamber is joining the American Chemistry Council, the National Association of Manufacturers, and other members and trades to develop Save Our Seas 3.0 and other recycling infrastructure and marine debris priorities. **Please contact** [Redacted - PII]

[Redacted - PII] [with any questions.](#)

Ozone and Particulate Matter NAAQS Review

EPA issued their final actions in December to retain the current NAAQS standards for both ozone and PM, designating both actions effective immediately. EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM2.5 NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m3 to 12 ug/m3. The Ozone standards were last tightened in 2015, when the agency lowered the ambient standards from 75 to 70 parts per million. The Chamber testified at both the EPA PM and ozone NAAQS public hearings supporting EPA’s retention of the current standards and submitted more detailed coalition comments on the proposals. Environmental groups and states have filed lawsuits over the last couple weeks challenging the retention of the current PM and ozone NAAQS standards, respectively. The Chamber along with other trades have intervened to support the retention of the current standards. Both rules have been identified by the Biden administration for reconsideration of the Trump decisions. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

PFAS

EPA Issued a 60-day request for comment on the interim guidance and PFAS waste disposal and destruction due on February 22, 2021. The guidance was prepared e in response to an

amendment to the FY2020 National Defense Authorization Act that requires development and update every three years. The Chamber is working with our coalition of trades and companies to provide comments to ensure all options are considered.

The House Bipartisan PFAS Task Force was launched in late January 2021, led by Congressmen Kildee (D-MI-05) and Fitzpatrick (R-PA-01) and including 55 members. Key issues:

- Reintroducing the PFAS Action Act.
- Developing a proposal to ban food storage containers with PFAS.
- Urging the administration to act on regulatory agenda such as designation under CERCLA.

Finally, the coalition is developing policy principles focusing on sound science, risk-based regulations, including finalizing the national Maximum Contaminant Level for PFOA and PFOS under the Safe Drinking Water Act.

Please contact [Redacted - PII]
[Redacted - PII] *with any questions or to get involved.*

Resilience

- The Chamber drafted a [blog](#) of policy suggestions on resilience for collaboration between Congress and the administration. We are also working on convening a workshop between the Council on Infrastructure Financing Authorities and state emergency managers to share experiences on implementing the Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act.

Please contact [Redacted - PII] *with any questions.*

TSCA

The Chamber continues to be active on regulatory issues related to the Toxic Substances and Control Act (TSCA). In 2020, the Chamber worked with a coalition of trade groups that requested that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. This effort resulted in EPA announcing plans for such a rulemaking in the fall 2020 regulatory agenda. The Chamber is now working with partner trades to formally encourage the Biden Administration to carry on with these risk management plans. Meanwhile, the Administration is considering revisions pertaining to an earlier step in the chemical regulation process—risk evaluation. The Chamber expects to continue to engage on issues related to both risk evaluation and risk management rulemakings and welcomes member input on the issue. **Please contact** [Redacted - PII] *with any questions.*

Stormwater Innovation Principles

The Chamber is providing comments to the House Committee on Transportation and Infrastructure on the reauthorization of the Clean Water State Revolving Funds including grant programs on stormwater reuse issues. **Please contact** [Redacted - PII]
[Redacted - PII] *with any questions.*

Water Infrastructure and Policy Priorities

The Chamber sent a [letter](#) to all Members of Congress urging passage of the Water Resources Development Act before it expires on September 30, 2020 and to include our water policy priorities in infrastructure legislation. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined "Waters of the United States" ("WOTUS") under the Clean Water Act ("CWA") and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies' efforts at the rule's signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber joined a coalition supporting an amendment by Senator Capito to the recent COVID relief package in the Senate to prevent the rule from being revoked. **Please**

contact [Redacted - PII] **with any questions.**

EPA Cost-Benefit Analysis

On December 9, 2020, EPA finalized a rule that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, we have met with OMB to support the rule and emphasize the importance of transparency and consistency in developing the agency's cost-benefit analyses for rulemakings. Earlier in this process, the Chamber issued a statement, presented [testimony](#) at the agency's public hearing on the rule, launched an advocacy [webpage](#), and submitted [coalition comments](#) in conjunction with several other trades. The rule is now under litigation and is also under review for reconsideration by the Biden Administration. **Please**

contact [Redacted - PII]

[Redacted - PII] **with any questions.**

Energy and Environment Committees Read-Ahead Materials

March 23, 2021



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Environment & Agriculture

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12. EPA Cost-Benefit Analysis
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Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Nationally Determined Contribution

On March 15th, the Chamber submitted to the White House a set of [principles and priorities](#) aimed at informing the Biden Administration's effort to develop a revised Nationally Determined Contribution for submission under the Paris Climate Agreement. The document details 8 high-level business community priorities for incorporation into the NDC, which is expected to be announced in late April. We are calling for reducing emissions as low as we can as fast as we can, while ensuring that any national targets and timetables are realistic, achievable, appropriately account for U.S. economic interests, and work to address impacts to trade-exposed, hard-to-adapt, and energy-intensive sectors. **Please contact** Redacted - PII

Redacted - PII **with any questions.**

Regulatory Process and Cost-Benefit Analysis Overhaul

As anticipated, the Biden Administration issued a regulatory freeze memo on day one that froze all of the Trump Administration's unfinished regulatory actions, including 66 rules that were under White House Office of Information and Regulatory Affairs (OIRA) review and an additional 135 rulemakings that were sent to the federal register but were unpublished.

President Biden has issued dozens of executive actions including a memo to all agencies called, "[Modernizing Regulatory Review](#)" that calls for updating the process that OIRA has followed for three decades when reviewing agencies' draft rulemakings. The memo also directs OIRA to update their regulatory cost-benefit guidelines that agencies are to follow when developing rulemakings, last issued in 2003, and for OIRA to focus on promoting rules that would yield significant benefits for disadvantaged communities.

In parallel, Biden's Climate Science order directed agencies to review every rulemaking issued during the Trump Administration to determine whether to suspend, revise, or rescind. The White House provided a preliminary list of [104 Trump rules](#) as their top priorities for agencies to review.

Also of note, EPA's general counsel issued a [memo](#) to DOJ requesting that DOJ "seek and obtain abeyances or stays of proceedings in pending litigation seeking judicial review." **Please contact**

Redacted - PII **with any questions.**

Updating the Social Cost of Carbon

As part of the Climate Science order issued on January 20, 2021, the President directed the interagency working group on the social cost of greenhouse gases to update the social costs of carbon, methane, and nitrous oxide, first with interim values, followed by final figures no later than January 2022. In February, the IWG released interim guidance that restores Obama-era valuation estimates, includes \$51 per metric ton of carbon dioxide at a 3% discount rate.

Meanwhile, the Chamber joined a coalition of trades [calling for a robust public engagement process](#) as the IWG considers longer-term revisions. These revisions to the SCC will likely incorporate the international values and lower discount rates, which could increase the benefit estimates in rulemakings substantially, ultimately supporting more stringent regulatory actions. These estimates would primarily be used in federal regulation, but also in federal procurement, permitting decisions, and loans. **Please contact** [Redacted - PII]

[Redacted - PII]

with any questions.

Federal Lands Leasing Ban

On January 27th, 2020, President Biden issued [Executive Order 14008](#), which among other things, indefinitely bans new oil and natural gas leasing on federal lands and waters. This action follows on the January 2^{0th}, [Secretarial Order](#) revoking normal delegation of authority for 60 days to Interior's bureaus of the authority to issue new leases, lease amendments, permits, etc. During this indefinite ban, the EO directs Interior to reassess the fossil fuel leasing programs as well as the respective royalty processes.

Federal lands and waters make up 22% of total us oil production and 12% total natural gas production. The current ban has created significant uncertainty for operators and curtailed investment in future exploration and production. Partnering with our Federation members, the Chamber will continue to aggressively explain how these policies are nearsighted and counterproductive to growing the economy and reducing greenhouse gas emissions. **Please contact Christopher Guith** [Redacted - PII] **with any questions.**

Endangered Species Act Reform

On December 16, 2020, the Department of the Interior (DOI) jointly with Department of Commerce (DOC) issued their t [final rule](#) oposal that wouldadd a definition of "habitat" to the regulations governing the listing of endangered and threatened species and designation of critical habitat under the Endangered Species Act (ESA). The final rule was effective on January 15, 2021 avoiding the Biden freeze memo that could have extended the effective date of the rule. In the recent Supreme Court ruling in *Weyerhaeuser Co. v. U.S. FWS*, the court explained that any area that meets the narrow category of critical habitat must logically be habitat. However, neither agency had yet established a definition for "habitat" although the statute provides a definition for "critical habitat." The final definition includes both temporal and physical qualifying elements, but is a broader definition than the proposal as it would include physical places that currently or periodically support a species. The Chamber [submitted comments](#) on the proposed rule suggesting that 'habitat' should only include places where the existing attributes currently exist to preclude agencies from requiring a place to be modified to support a species.

In a separate [final rule](#) issued on December 18, 2020, DOI finalized clarifications to the agency's consideration of benefits of both including and excluding specific habitat segments in critical habitat designations. The final rule was effective on January 19, 2021, also avoiding the Biden freeze memo that would have extended the effective date of the rule. **Please contact**

Christopher Guith

Redacted - PII

Redacted - PII

with any questions.

Electric Sector Supply Chain Activities

On January 20, 2021, one of President Biden's first [executive orders](#) (EOs) suspended for ninety (90) days the effectiveness of the Trump Administration's May 1, 2020, [executive order](#) which sought to limit the suppliers of electric grid equipment and prohibit the purchase and use of such equipment from countries deemed adversarial to domestic grid security (the "BPS EO"). Following this suspension, we received direct confirmation from the Department of Energy (DOE) that the suspension also applies to the [Prohibition Order](#) that DOE had issued on December 17, 2020. The Prohibition Order sought to specifically ban numerous categories of equipment, firmware, and software at or within bulk power system facilities that serve or support critical defense facilities. However, subsequent FAQ guidance from DOE, as well as inquiries from supply chain customers, have made unclear the current applicability and enforceability of the Prohibition Order. Given these developments, the Chamber is engaging with its electric utility and impacted supply chain members, along with other stakeholders, to provide significant input to DOE as it reevaluates the BPS EO, the Prohibition Order, and what additional activities DOE may undertake with respect to the bulk power system supply chain. Among other outreach, the Chamber on March 1, 2021, submitted a [letter](#) to Secretary of Energy Granholm and key White House officials requesting that DOE undertake meaningful outreach with bulk power system supply chain stakeholders before DOE determines its next steps. This letter leverages some of the points we previously filed with DOE in [comments](#) responsive to the Request for Information DOE issued in response to the BPS EO. On March 9, 2021, the Chamber also transmitted clarifying questions to key DOE personnel, following the development of a comprehensive list of questions with its bulk power system supply chain working group. The Chamber requested that a meeting with DOE be scheduled to further discuss the concerns expressed within this communication.

On a separate track, the Federal Energy Regulatory Commission (FERC) on September 17, 2020, issued its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its members, the Chamber submitted [comments](#) responsive to FERC's NOI on November 23, 2020. Further action by FERC responsive to the NOI is anticipated. **Please contact** Redacted - PII *with any questions.*

Executive Order on America's Supply Chains

On February 24, 2021, President Biden issued [Executive Order 14017](#), "America's Supply Chains." This executive order directs an immediate 100-day review across federal agencies to address vulnerabilities in the supply chains of four key product areas: pharmaceuticals and active pharmaceutical ingredients; critical minerals, including rare earths; semiconductors and advanced packaging; and large capacity batteries, such as those used in electric vehicles. In addition, the order calls for a more in-depth one-year review of a broader set of U.S. supply chains. This longer review includes six key sectors: the energy sector industrial base; the information and communications technology (ICT) industrial base; the transportation industrial base; the defense industrial base; the public health and biological preparedness industrial base;

and the supply chains for agricultural commodities and food production. The Chamber has established a cross-sectoral internal working group to coordinate the Chamber's collection of information and analysis, as well as to formulate the Chamber's advocacy, regarding this far-reaching executive order. **Please contact** [Redacted - PII] **with any questions.**

Energy Innovation Legislation

In late December, the Energy Act of 2020 was included in omnibus appropriations legislation that was signed into law just before adjournment of the 116th Congress. Passage of the legislation completed work on one of the Chamber's top legislative priorities in 2020. The Chamber worked closely with members of Congress and key committee staff on both sides of the aisle to craft and mobilize support for the bill and the dozens of individual pieces of legislation that were included in it. In response, Marty Durbin issued a [statement](#) noting that successful passage of the Energy Act proves "there is common ground on which all sides of the debate can come together to begin to address climate change, promote American technological leadership, and foster continued economic growth." In the weeks and months ahead, the Chamber will work to ensure the individual programs and activities authorized by the Energy Act are fully funded through the appropriations process. **Please contact** [Redacted - PII] [Redacted - PII] **with questions.**

EPA MATS Rule

On April 16, 2020, the EPA issued its [final rule](#) modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA's proposal to eliminate the "appropriate and necessary" finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the "appropriate and necessary" filing, while retaining the compliance obligations therein. On January 20, 2021, an early Biden Administration [Executive Order](#) committed to review a significant number of EPA rules and regulations, including the MATS final rule published on May 22, 2020. While lawsuits are also pending on this rule, we anticipate that the Biden Administration's review of this rule could moot some of that litigation through the reinstatement of the "appropriate and necessary" finding noted above. However, EPA revisions to this final rule could provide challenges for the remaining coal fleet if aggressive modifications to the accompanying Residual Risk and Technology Review are pursued. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

FERC Pipeline Certification Regulations

On April 19, 2018, the Federal Energy Regulatory Commission (FERC) issued a [Notice of Inquiry](#) (NOI) initiating a review of its 1999 interstate natural gas Certificate Policy Statement, which the Commission utilizes to guide its evaluation of natural gas pipeline infrastructure projects.

The Global Energy Institute submitted [comments](#) responsive to this NOI on July 25, 2018. On February 18, 2021, FERC issued a [revised NOI](#) in the same docket (PL18-1-000), reiterating a number of the questions posed in 2018 while adding a number of new and revised questions and an additional broad area of inquiry, which is focused on FERC's consideration of the effects of its pipeline certification process on environmental justice communities. FERC's aim with the issuance is to "refresh the record and provide updated information and additional viewpoints to help the Commission assess its policy." The Chamber is currently evaluating the merits of submitting additional comments in this docket, which are currently scheduled to be due on April 26, 2021. **Please contact** [Redacted - PII] **with any questions.**

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the "one-mile rule" used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities' access to wholesale markets, among other things. Concurrent with FERC's finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC's final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020. A number of lawsuits have now been filed and consolidated at the appellate court level challenging FERC's final rule on PURPA. These cases are currently being held in abeyance for the development of a briefing schedule. The Chamber anticipates playing a role as an amicus, with industry allies, in defense of PURPA's modernization. **Please contact** [Redacted - PII] **with any questions.**

Migratory Bird Treaty Act

On January 7, 2021, the U.S. Fish and Wildlife Service finalized a rulemaking that codified an update to the FWS's interpretation that the Migratory Bird Treaty Act's ("MBTA") prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. As the final rule was not effective until after January 20, 2021, the Biden administration issued an extension of the effective date of the rule out to March 8, 2021 and has requested comment on the rule by March 1, 2021. **Please contact Christopher Guith** [Redacted - PII] **with any questions.**

Nationwide Permit Coalition Comments

The Army Corps of Engineers finalized updates to the Nationwide Permit program on January 13, 2021. 5th. On January 20, 2021, the Biden administration issued a [regulatory freeze](#) for new

and pending rules, including rules published in the *Federal Register* but not yet implemented, to provide the new administration time for review. The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer's [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community's broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation. **Please contact** [Redacted - PII] **or Christopher Guith** [Redacted - PII] **with any questions.**

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy — energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others – to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- **Revoked 2017 Permit Streamlining EO** – The Biden climate science executive order revoked the Trump Executive Order 13807, the One Federal Decision order that helped expedite federal environmental reviews and the permitting process for infrastructure projects. The Biden order directed OMB and the Chair of the CEQ to jointly consider whether to recommend that a replacement order be issued.
- **Reinstated Obama Era GHG NEPA Guidance** – The Biden climate science executive order also rescinded the June 2019 draft guidance on the consideration of GHG emissions in NEPA. The order reinstated the Obama era GHG NEPA guidance issued in August 2016.
- **DOE NEPA Final Rule on LNG Terminals** – On January 4, 2021, DOE's final NEPA rulemaking became effective. The [final rule](#) would narrow the required analysis under NEPA for LNG exports and remove the requirement for NEPA analysis for LNG imports. For exports, DOE made two primary changes: (1) making the interpretation that the Natural Gas Act (NGA) authorizes LNG exports to Free Trade Agreement (FTA) countries limiting the discretion under NEPA for approvals and (2) limiting the consideration of effects for LNG exports to non-FTA countries to those occurring at or after the point of export. For imports, DOE also interprets the NGA to require authorization of imports so the agency removed the reference to NEPA authorizations from their implementing rule. The Chamber's coalition comments on the proposal can be found [here](#).
- Five lawsuits have been filed by environmental groups and state attorneys general challenging the CEQ NEPA final rulemaking. The Chamber is currently collaborating with eight other trade associations on the best way to provide legal support for the NEPA updates and has intervened or filed to intervene in all five cases. **Please contact** [Redacted - PII] **with any questions.**

FIPSC Proposal to Create Sector for Mining

On January 8, 2021, the Federal Permitting Improvement Steering Council (FIPSC) finalized an action that added mining as a sector with infrastructure projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act (FAST-41). The new mining category would focus on minerals, ore, and raw materials used for energy production, manufacturing, or other purpose. It would not include conventional energy production such as coal and oil & gas as they are already covered under an existing FIPSC sector. The addition of mining as a FAST-41 sector would allow a qualified mining infrastructure project to become a FAST-41 covered project. The Chamber submitted [comments](#) on the proposed rule supporting the addition of the mining sector. **Please contact** Redacted - PII **with any questions.**

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

The years-long negotiations between the Federal government, California, and automakers over fuel economy and greenhouse gas (GHG) standards is expected to continue in the Biden Administration. Since 2019, the Chamber has become more active in engaging in these issues, actively lobbying for middle-ground solutions that deliver steady fuel economy gains, preserve a single national market for auto sales and unite stakeholders.

In 2020, the Trump Administration finalized rules known as "SAFE 1" (rescinding California's special Clean Air Act waiver to set standards more stringent than the federal government) and "SAFE 2" (revised passenger vehicle fuel economy standards for model years 2021-2026). The Biden Administration has committed to reconsidering both rules, with formal action expected in the spring or summer of 2021. Meanwhile, on February 8, 2021, the D.C. Circuit granted the Biden Administration's request to place litigation regarding the SAFE 1 rule in abeyance. The Chamber intends to remain engaged on this issue and seek a middle-ground solutions that are acceptable to its broad membership.

Please contact Redacted - PII **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019 the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration's Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA's CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber's [brief](#), submitted primarily in defense of the EPA's repeal of the CPP, was submitted on July 16, 2020. On October 8, 2020, the Court held approximately 9 hours of oral argument focused on the merits of the EPA's repeal of the Clean Power Plan (CPP) and its replacement of that regulation with the ACE Rule.

On January 19, 2021, the U.S. Court of Appeals for the D.C. Circuit issued a 2-1 [opinion](#) vacating the Trump EPA's rules rescinding the CPP and replacing it with the ACE Rule. The majority opinion held that the Clean Air Act does not constrain EPA to "inside the fence" mechanisms to achieve emissions reductions, greenhouse gases from electric generating units in this instance. The order further rejected the replacement ACE Rule because it was premised on what the court viewed as an overly constrained view of the agency's authority. The Court remanded the rulemaking to EPA for the agency to reassess how it regulates greenhouse gas emissions from power plants. Judges Millett and Pillard (both Obama appointees) supported the full opinion, while Judge Walker (a Trump appointee) wrote a statement concurring in part and dissenting in part.

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Please contact Redacted - PII ***with any questions.***

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hardrock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings *via* a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. The Administration did not include this final rule in its non-exclusive listing of EPA actions to review as part of President Biden’s [Executive Order](#) on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Please contact** *

Redacted - PII

with any questions.

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020.

Separately, EPA proposed in December 2020 a guidance document that identifies one additional factor for consideration when evaluating whether and how to perform a “functional equivalent” analysis; specifically the “design and performance of the system or facility from which the pollutant is released.” EPA finalized this [guidance](#) on January 14, 2021. While a guidance document such as this does not have the force and effect of law, it is likely that the Biden EPA may reevaluate this approach with respect to the “functional equivalent” analysis.

Please contact [Redacted - PII] **with any questions.**

HFC Phasedown Legislation

There are two issues on our agenda following-up on the enactment of the American Innovation and Manufacturing (AIM) Act: 1) President Biden’s January 27, 2021 executive order on climate priorities directed the Secretary of State to prepare a package within 60 days to send the Kigali amendment to the Senate for ratification. The Chamber is re-engaging a coalition of our member trade associations to support ratification. 2) EPA has 270 days to promulgate several rules, including allocations to implement the AIM Act. The Chamber will work with our members to ensure the business community’s priorities are included in the final regulation.

Please contact [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Chamber is joining the American Chemistry Council, the National Association of Manufacturers, and other members and trades to develop Save Our Seas 3.0 and other recycling infrastructure and marine debris priorities. **Please contact** [Redacted - PII]

[Redacted - PII]

Ozone and Particulate Matter NAAQS Review

EPA issued their final actions in December to retain the current NAAQS standards for both ozone and PM, designating both actions effective immediately. EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM2.5 NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m3 to 12 ug/m3. The Ozone standards were last tightened in 2015, when the agency lowered the ambient standards from 75 to 70 parts per million. The Chamber testified at both the EPA PM and ozone NAAQS public hearings supporting EPA’s retention of the current standards and submitted more detailed coalition comments on the proposals. Environmental groups and states have filed lawsuits over the last couple weeks challenging the retention of the current PM and ozone NAAQS standards, respectively. The Chamber along with other trades have intervened to support the retention of the current standards. Both rules have been identified by the Biden administration for reconsideration of the Trump decisions. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

- **PFAS**

The Chamber and our coalition of companies and trades sent our policy principles focusing on sound science, risk-based regulations, including finalizing the national

Maximum Contaminant Level for PFOA and PFOS under the Safe Drinking Water Act to Administrator Regan on March 11, 2021.

- The coalition provided comments in response to EPA's interim guidance and PFAS waste disposal and destruction. The guidance was prepared in response to an amendment to the FY2020 National Defense Authorization Act that requires development and update every three years. EPA also issued an [unregulated contaminant water monitoring rule, which includes 29 PFAS and also reissued the proposed regulatory determination on PFOA and PFOS. The Chamber is considering whether and how to provide comments.](#)
- During late February 2021, Senator Gillibrand (D-NY) and Rep. Maloney (NY-12) introduced the [PFAS Firefighters Protection Act](#) which calls for prohibiting use of AFFF by 2024. The [Bipartisan PFAS Task Force](#), led by Reps Kildee (MI-05) and Fitzpatrick (PA-01) launched its agenda, including Rep. Dingell's PFAS Action Act, which will likely be introduced this week. Other priorities such as banning PFAS in plastic food packaging could also move forward.

Please contact

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with any questions or to get involved.

Resilience

- The Chamber drafted a [blog](#) of policy suggestions on resilience for collaboration between Congress and the administration. We are also working on convening a workshop between the Council on Infrastructure Financing Authorities and state emergency managers to share experiences on implementing the Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act. These policy suggestions were also included in recent testimony before the House Committee on Transportation and Infrastructure.

Please contact

Redacted - PII

with any questions.

TSCA

The Chamber continues to be active on regulatory issues related to the Toxic Substances and Control Act (TSCA). In 2020, the Chamber worked with a coalition of trade groups that requested that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. This effort resulted in EPA announcing plans for such a rulemaking in the fall 2020 regulatory agenda. The Chamber is now working with partner trades to formally encourage the Biden Administration to carry on with these risk management plans. [The Chamber led a coalition letter on March 11, 2021](#) to Administrator Regan conveying the importance of framework rulemaking and encouraging Regan's EPA to lead this work. The letter had 20 signatories and we are working with EPA staff now to coordinate a meeting with the trades who signed on to discuss the letter. Meanwhile, the Administration is considering

revisions pertaining to an earlier step in the chemical regulation process—risk evaluation. The Chamber expects to continue to engage on issues related to both risk evaluation and risk management rulemakings and welcomes member input on the issue. **Please contact** [Redacted - PII] **with any questions.**

Stormwater Innovation Principles

The Chamber is providing comments to the House Committee on Transportation and Infrastructure on the reauthorization of the Clean Water State Revolving Funds including grant programs on stormwater reuse issues. **Please contact** [Redacted - PII] **with any questions.**

Water Infrastructure and Policy Priorities

- The House Committee on Transportation and Infrastructure Committee recently introduced the [Water Quality and Job Creation Act of 2021](#), which includes \$40 billion over five years for the Clean Water SRF and a provision providing \$200 M per year over four years in grants to wastewater systems to treat PFAS and other emerging contaminants. The Chamber endorsed this legislation. The Senate Committee on Environment and Public Works Democrats and Republicans are close to reaching a bipartisan agreement on a water infrastructure approach. Here are our [2021 water policy priorities](#) for your consideration. **Please contact** [Redacted - PII] **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber joined a coalition supporting an amendment by Senator Capito to the recent COVID relief package in the Senate to prevent the rule from being revoked. **Please contact** [Redacted - PII] **with any questions.**

EPA Cost-Benefit Analysis

On December 9, 2020, EPA finalized a rule that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, we have met with OMB to support the rule and emphasize the importance of transparency and consistency in developing the agency’s cost-benefit analyses for rulemakings. Earlier in this process, the Chamber issued a statement, presented [testimony](#) at the agency’s public hearing on the rule, launched an advocacy [webpage](#), and submitted [coalition comments](#) in conjunction with several other trades. The rule is now under litigation and is also under review for reconsideration by the Biden Administration. **Please**

contact [Redacted - PII]
[Redacted - PII] *with any questions.*

PIP (3:1)

On March 4, 2021, [the Chamber submitted comments](#) to the EPA seeking an extension of the compliance timeframe to the EPA's final rule on Phenol, Isopropylated Phosphate, also known as PIP (3:1). EPA's final rule published on January 6, 2021 mandated that all products with PIP (3:1) be removed from commerce entirely within 60 days – which was March 8, 2021. The rule and the 60-day timeline for compliance would have a drastic negative impact on supply chains and the economy, given that PIP (3:1) is commonly used in the production of electrical components and in electronics. On March 8, 2021, the EPA announced a 180-day no action assurance and a 60-day comment period. The Chamber is planning to submit coalition comments during the comment period.

If your organization will be impacted by PIP (3:1), please reach out to Mary. We'd appreciate your input on coalition comments.

Please contact [Redacted - PII] *with any questions.*

**Leadership Council
Read-Ahead Materials**

March 23, 2021



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Litigation Update

USCLC Environment & Energy Cases

3/17/2021

Regulatory Reform in the Courts: GEI and the Litigation Center have continued our litigation efforts to overturn costly regulations and support helpful regulatory reforms. The statistics below reflect our efforts during 2021 to-date.

- Plaintiff/Intervener Cases Pending: 17 (2 new cases in 2021)
- Plaintiff/Intervener Case Outcomes: 1 favorable, 1 unfavorable
- New Environment or Energy Amicus Briefs Filed in 2021: 3
- Amicus Outcomes in 2020: 5 -- 2 favorable; 2 unfavorable; 1 neutral/other (18 cases remain pending)

Pending Plaintiff/Intervener Cases (17)

(* = new challenges filed in 2021)

1. [Chamber v. EPA](#) (NSPS, GHG New Source Performance Standards for EGUs)
2. [Environmental Defense Fund v. EPA](#) (NSR Guidance under Clean Air Act)
3. [Defenders of Wildlife v. Ashe](#); [Center for Biological Diversity v. Ashe](#) (Endangered species designations)
4. [Texas v. EPA](#) (CA5; Regional Haze Program)
5. [Chamber v. EPA](#) (CADR; Regional Haze Program)
6. [American Chemistry Council & Chamber et al. v. EPA](#) (Risk Management Program)
7. [Air Alliance Houston v. EPA](#) (Risk Management Program 2019 Reconsideration Rule)
8. [Colorado v. EPA](#) (D. Colo.; Navigable Waters Protection Rule defining WOTUS under Clean Water Act)
9. [Colorado v. EPA](#) (CA10; Navigable Waters Protection Rule defining WOTUS under Clean Water Act)
10. [South Carolina Coastal Conservation League v. Wheeler](#) (Navigable Waters Protection Rule defining WOTUS under Clean Water Act)
11. [Wild Virginia v. CEQ](#) (National Environmental Policy Act (NEPA))
12. [Iowa Citizens for Community Improvement v. CEQ](#) (National Environmental Policy Act (NEPA))
13. [Environmental Justice Health Alliance v. CEQ](#) (National Environmental Policy Act (NEPA))
14. [Alaska Community Action on Toxics v. CEQ](#) (National Environmental Policy Act (NEPA) - ENGO)
15. [Sierra Club v. EPA](#) (National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines Residual Risk and Technology Review; Final Rule)
16. [*State of New York v. EPA](#) (2020 review of the National Ambient Air Quality Standards for Ozone)

17. [*State of California v. EPA](#) (PM-NAAQS / 2020 review of the National Ambient Air Quality Standards for Particulate Matter)

Plaintiff/Intervener Outcomes (1 favorable, 1 unfavorable)

Favorable

1. [Colorado v. EPA](#) (CA10; Navigable Waters Protection Rule defining WOTUS under Clean Water Act – appeal from injunction issued by District of Colorado)

Unfavorable

1. [American Lung Association v. EPA](#) (Affordable Clean Energy Rule (ACE))

Pending Amicus Cases (18)

(* = new amicus briefs filed in 2021)

1. [City of New York v. BP PLC](#)
2. [League of Conservation Voters v. Trump](#)
3. [Parish of Cameron v. Auster](#)
4. [United States v. Ameren Missouri](#)
5. [Ohio v. Volkswagen Aktiengesellschaft](#)
6. [Center for Biological Diversity v. U.S. Fish & Wildlife Service](#)
7. [Upstate Forever v. Kinder Morgan Energy Partners, L.P.](#)
8. [Prairie Rivers Network v. Dynegy Midwest Generation, LLC](#)
9. [American Chemistry Council v. Office of Environmental Health Hazard Assessment](#)
10. [Parish of Plaquemines v. Louisiana](#)
11. [Union of Concerned Scientists v. National Highway Traffic Safety Administration](#)
12. [Northern Plains Resource Council v. US Army Corps of Engineers](#)
13. [Clean Air Council v. U.S. Steel Corporation](#)
14. [BP PLC v. Mayor & City Council of Baltimore](#)
15. [Conservation Law Foundation v. EPA](#)
16. [*Cedar Point Nursery v. Hassid](#) (SCOTUS merits)
17. [*PennEast Pipeline Co. v. New Jersey](#) (SCOTUS merits)
18. [*Chevron Corp. v. City of Oakland](#) (SCOTUS cert.)

E&E Amicus Litigation Outcomes (2 favorable, 2 unfavorable, 1 other)

Favorable

1. [PennEast Pipeline Co. v. New Jersey](#) (SCOTUS cert. granted)
2. [Wheeler v. Arkema France, S.A.](#)

Unfavorable

1. [Sierra Club v. EPA; Downwinders at Risk v. EPA](#)
2. [FMC Corp. v. Shoshone-Bannock Tribes](#)

Neutral Outcome or Issue Not Addressed

1. [Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers](#) (DC Cir. merits stage)

Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Nationally Determined Contribution

On March 15th, the Chamber submitted to the White House a set of [principles and priorities](#) aimed at informing the Biden Administration's effort to develop a revised Nationally Determined Contribution for submission under the Paris Climate Agreement. The document details 8 high-level business community priorities for incorporation into the NDC, which is expected to be announced in late April. We are calling for reducing emissions as low as we can as fast as we can, while ensuring that any national targets and timetables are realistic, achievable, appropriately account for U.S. economic interests, and work to address impacts to trade-exposed, hard-to-adapt, and energy-intensive sectors. **Please contact** Redacted - PII

Redacted - PII **with any questions.**

Regulatory Process and Cost-Benefit Analysis Overhaul

As anticipated, the Biden Administration issued a regulatory freeze memo on day one that froze all of the Trump Administration's unfinished regulatory actions, including 66 rules that were under White House Office of Information and Regulatory Affairs (OIRA) review and an additional 135 rulemakings that were sent to the federal register but were unpublished.

President Biden has issued dozens of executive actions including a memo to all agencies called, "[Modernizing Regulatory Review](#)" that calls for updating the process that OIRA has followed for three decades when reviewing agencies' draft rulemakings. The memo also directs OIRA to update their regulatory cost-benefit guidelines that agencies are to follow when developing rulemakings, last issued in 2003, and for OIRA to focus on promoting rules that would yield significant benefits for disadvantaged communities.

In parallel, Biden's Climate Science order directed agencies to review every rulemaking issued during the Trump Administration to determine whether to suspend, revise, or rescind. The White House provided a preliminary list of [104 Trump rules](#) as their top priorities for agencies to review.

Also of note, EPA's general counsel issued a [memo](#) to DOJ requesting that DOJ "seek and obtain abeyances or stays of proceedings in pending litigation seeking judicial review." **Please contact** Redacted - PII **with any questions.**

Updating the Social Cost of Carbon

As part of the Climate Science order issued on January 20, 2021, the President directed the interagency working group on the social cost of greenhouse gases to update the social costs of carbon, methane, and nitrous oxide, first with interim values, followed by final figures no later than January 2022. In February, the IWG released interim guidance that restores Obama-era valuation estimates, includes \$51 per metric ton of carbon dioxide at a 3% discount rate.

Meanwhile, the Chamber joined a coalition of trades [calling for a robust public engagement process](#) as the IWG considers longer-term revisions. These revisions to the SCC will likely incorporate the international values and lower discount rates, which could increase the benefit estimates in rulemakings substantially, ultimately supporting more stringent regulatory actions. These estimates would primarily be used in federal regulation, but also in federal procurement, permitting decisions, and loans. **Please contact** Redacted - PII **with any questions.**

Federal Lands Leasing Ban

On January 27th, 2020, President Biden issued [Executive Order 14008](#), which among other things, indefinitely bans new oil and natural gas leasing on federal lands and waters. This action follows on the January 20th, [Secretarial Order](#) revoking normal delegation of authority for 60 days to Interior's bureaus of the authority to issue new leases, lease amendments, permits, etc. During this indefinite ban, the EO directs Interior to reassess the fossil fuel leasing programs as well as the respective royalty processes.

Federal lands and waters make up 22% of total us oil production and 12% total natural gas production. The current ban has created significant uncertainty for operators and curtailed investment in future exploration and production. Partnering with our Federation members, the Chamber will continue to aggressively explain how these policies are nearsighted and counterproductive to growing the economy and reducing greenhouse gas emissions. **Please contact Christopher Guith** Redacted - PII **with any questions.**

Endangered Species Act Reform

On December 16, 2020, the Department of the Interior (DOI) jointly with Department of Commerce (DOC) issued their [final rule](#) proposal that would add a definition of "habitat" to the regulations governing the listing of endangered and threatened species and designation of critical habitat under the Endangered Species Act (ESA). The final rule was effective on January 15, 2021 avoiding the Biden freeze memo that could have extended the effective date of the rule. In the recent Supreme Court ruling in *Weyerhaeuser Co. v. U.S. FWS*, the court explained that any area that meets the narrow category of critical habitat must logically be habitat. However, neither agency had yet established a definition for "habitat" although the statute

provides a definition for “critical habitat.” The final definition includes both temporal and physical qualifying elements, but is a broader definition than the proposal as it would include physical places that currently or periodically support a species. The Chamber [submitted comments](#) on the proposed rule suggesting that ‘habitat’ should only include places where the existing attributes currently exist to preclude agencies from requiring a place to be modified to support a species.

In a separate [final rule](#) issued on December 18, 2020, DOI finalized clarifications to the agency’s consideration of benefits of both including and excluding specific habitat segments in critical habitat designations. The final rule was effective on January 19, 2021, also avoiding the Biden freeze memo that would have extended the effective date of the rule. **Please contact**

Christopher Guith [Redacted - PII]

[Redacted - PII]

with any questions.

Electric Sector Supply Chain Activities

On January 20, 2021, one of President Biden’s first [executive orders](#) (EOs) suspended for ninety (90) days the effectiveness of the Trump Administration’s May 1, 2020, [executive order](#) which sought to limit the suppliers of electric grid equipment and prohibit the purchase and use of such equipment from countries deemed adversarial to domestic grid security (the “BPS EO”). Following this suspension, we received direct confirmation from the Department of Energy (DOE) that the suspension also applies to the [Prohibition Order](#) that DOE had issued on December 17, 2020. The Prohibition Order sought to specifically ban numerous categories of equipment, firmware, and software at or within bulk power system facilities that serve or support critical defense facilities. However, subsequent FAQ guidance from DOE, as well as inquiries from supply chain customers, have made unclear the current applicability and enforceability of the Prohibition Order. Given these developments, the Chamber is engaging with its electric utility and impacted supply chain members, along with other stakeholders, to provide significant input to DOE as it reevaluates the BPS EO, the Prohibition Order, and what additional activities DOE may undertake with respect to the bulk power system supply chain. Among other outreach, the Chamber on March 1, 2021, submitted a [letter](#) to Secretary of Energy Granholm and key White House officials requesting that DOE undertake meaningful outreach with bulk power system supply chain stakeholders before DOE determines its next steps. This letter leverages some of the points we previously filed with DOE in [comments](#) responsive to the Request for Information DOE issued in response to the BPS EO. On March 9, 2021, the Chamber also transmitted clarifying questions to key DOE personnel, following the development of a comprehensive list of questions with its bulk power system supply chain working group. The Chamber requested that a meeting with DOE be scheduled to further discuss the concerns expressed within this communication.

On a separate track, the Federal Energy Regulatory Commission (FERC) on September 17, 2020, issued its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its members, the Chamber submitted [comments](#) responsive to FERC’s NOI on November 23, 2020. Further action by FERC responsive to the NOI is anticipated. **Please contact** [Redacted - PII] **with any questions.**

Executive Order on America's Supply Chains

On February 24, 2021, President Biden issued [Executive Order 14017](#), "America's Supply Chains." This executive order directs an immediate 100-day review across federal agencies to address vulnerabilities in the supply chains of four key product areas: pharmaceuticals and active pharmaceutical ingredients; critical minerals, including rare earths; semiconductors and advanced packaging; and large capacity batteries, such as those used in electric vehicles. In addition, the order calls for a more in-depth one-year review of a broader set of U.S. supply chains. This longer review includes six key sectors: the energy sector industrial base; the information and communications technology (ICT) industrial base; the transportation industrial base; the defense industrial base; the public health and biological preparedness industrial base; and the supply chains for agricultural commodities and food production. The Chamber has established a cross-sectoral internal working group to coordinate the Chamber's collection of information and analysis, as well as to formulate the Chamber's advocacy, regarding this far-reaching executive order. **Please contact** Redacted - PII **with any questions.**

Energy Innovation Legislation

In late December, the Energy Act of 2020 was included in omnibus appropriations legislation that was signed into law just before adjournment of the 116th Congress. Passage of the legislation completed work on one of the Chamber's top legislative priorities in 2020. The Chamber worked closely with members of Congress and key committee staff on both sides of the aisle to craft and mobilize support for the bill and the dozens of individual pieces of legislation that were included in it. In response, Marty Durbin issued a [statement](#) noting that successful passage of the Energy Act proves "there is common ground on which all sides of the debate can come together to begin to address climate change, promote American technological leadership, and foster continued economic growth." In the weeks and months ahead, the Chamber will work to ensure the individual programs and activities authorized by the Energy Act are fully funded through the appropriations process. **Please contact** Redacted - PII Redacted - PII **with questions.**

EPA MATS Rule

On April 16, 2020, the EPA issued its [final rule](#) modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA's proposal to eliminate the "appropriate and necessary" finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the "appropriate and necessary" filing, while retaining the compliance obligations therein. On January 20, 2021, an early Biden Administration [Executive Order](#) committed to review a significant number of EPA rules and regulations, including the MATS final rule published on May 22, 2020. While

lawsuits are also pending on this rule, we anticipate that the Biden Administration's review of this rule could moot some of that litigation through the reinstatement of the "appropriate and necessary" finding noted above. However, EPA revisions to this final rule could provide challenges for the remaining coal fleet if aggressive modifications to the accompanying Residual Risk and Technology Review are pursued. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

FERC Pipeline Certification Regulations

On April 19, 2018, the Federal Energy Regulatory Commission (FERC) issued a [Notice of Inquiry](#) (NOI) initiating a review of its 1999 interstate natural gas Certificate Policy Statement, which the Commission utilizes to guide its evaluation of natural gas pipeline infrastructure projects. The Global Energy Institute submitted [comments](#) responsive to this NOI on July 25, 2018. On February 18, 2021, FERC issued a [revised NOI](#) in the same docket (PL18-1-000), reiterating a number of the questions posed in 2018 while adding a number of new and revised questions and an additional broad area of inquiry, which is focused on FERC's consideration of the effects of its pipeline certification process on environmental justice communities. FERC's aim with the issuance is to "refresh the record and provide updated information and additional viewpoints to help the Commission assess its policy." The Chamber is currently evaluating the merits of submitting additional comments in this docket, which are currently scheduled to be due on April 26, 2021. **Please contact** [Redacted - PII] **with any questions.**

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the "one-mile rule" used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities' access to wholesale markets, among other things. Concurrent with FERC's finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC's final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020. A number of lawsuits have now been filed and consolidated at the appellate court level challenging FERC's final rule on PURPA. These cases are currently being held in abeyance for the development of a briefing schedule. The Chamber anticipates playing a role as an amicus, with industry allies, in defense of PURPA's modernization. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

Migratory Bird Treaty Act

On January 7, 2021, the U.S. Fish and Wildlife Service finalized a rulemaking that codified an update to the FWS's interpretation that the Migratory Bird Treaty Act's ("MBTA") prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. As the final rule was not effective until after January 20, 2021, the Biden administration issued an extension of the effective date of the rule out to March 8, 2021 and has requested comment on the rule by March 1, 2021. **Please contact Christopher Guith** [Redacted - PII] [Redacted - PII] **with any questions.**

Nationwide Permit Coalition Comments

The Army Corps of Engineers finalized updates to the Nationwide Permit program on January 13, 2021. 5th. On January 20, 2021, the Biden administration issued a [regulatory freeze](#) for new and pending rules, including rules published in the *Federal Register* but not yet implemented, to provide the new administration time for review. The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer's [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community's broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation. **Please contact** [Redacted - PII] **or Christopher Guith** [Redacted - PII] **with any questions.**

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy — energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others – to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- **Revoked 2017 Permit Streamlining EO** – The Biden climate science executive order revoked the Trump Executive Order 13807, the One Federal Decision order that helped expedite federal environmental reviews and the permitting process for infrastructure projects. The Biden order directed OMB and the Chair of the CEQ to jointly consider whether to recommend that a replacement order be issued.
- **Reinstated Obama Era GHG NEPA Guidance** – The Biden climate science executive order also rescinded the June 2019 draft guidance on the consideration of GHG emissions in NEPA. The order reinstated the Obama era GHG NEPA guidance issued in August 2016.
- **DOE NEPA Final Rule on LNG Terminals** – On January 4, 2021, DOE's final NEPA rulemaking became effective. The [final rule](#) would narrow the required analysis under NEPA for LNG exports and remove the requirement for NEPA analysis for LNG imports. For exports, DOE made two primary changes: (1) making the interpretation that the Natural Gas Act (NGA)

authorizes LNG exports to Free Trade Agreement (FTA) countries limiting the discretion under NEPA for approvals and (2) limiting the consideration of effects for LNG exports to non-FTA countries to those occurring at or after the point of export. For imports, DOE also interprets the NGA to require authorization of imports so the agency removed the reference to NEPA authorizations from their implementing rule. The Chamber's coalition comments on the proposal can be found [here](#).

- Five lawsuits have been filed by environmental groups and state attorneys general challenging the CEQ NEPA final rulemaking. The Chamber is currently collaborating with eight other trade associations on the best way to provide legal support for the NEPA updates and has intervened or filed to intervene in all five cases. **Please contact** Redacted - PII Redacted - PII **with any questions.**

FIPSC Proposal to Create Sector for Mining

On January 8, 2021, the Federal Permitting Improvement Steering Council (FIPSC) finalized an action that added mining as a sector with infrastructure projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act (FAST-41). The new mining category would focus on minerals, ore, and raw materials used for energy production, manufacturing, or other purpose. It would not include conventional energy production such as coal and oil & gas as they are already covered under an existing FIPSC sector. The addition of mining as a FAST-41 sector would allow a qualified mining infrastructure project to become a FAST-41 covered project. The Chamber submitted [comments](#) on the proposed rule supporting the addition of the mining sector. **Please contact** Redacted - PII **with any questions.**

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

The years-long negotiations between the Federal government, California, and automakers over fuel economy and greenhouse gas (GHG) standards is expected to continue in the Biden Administration. Since 2019, the Chamber has become more active in engaging in these issues, actively lobbying for middle-ground solutions that deliver steady fuel economy gains, preserve a single national market for auto sales and unite stakeholders.

In 2020, the Trump Administration finalized rules known as "SAFE 1" (rescinding California's special Clean Air Act waiver to set standards more stringent than the federal government) and "SAFE 2" (revised passenger vehicle fuel economy standards for model years 2021-2026). The Biden Administration has committed to reconsidering both rules, with formal action expected in the spring or summer of 2021. Meanwhile, on February 8, 2021, the D.C. Circuit granted the Biden Administration's request to place litigation regarding the SAFE 1 rule in abeyance. The Chamber intends to remain engaged on this issue and seek a middle-ground solutions that are acceptable to its broad membership.

Please contact Redacted - PII **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019 the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration's Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA's CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber's [brief](#), submitted primarily in defense of the EPA's repeal of the CPP, was submitted on July 16, 2020. On October 8, 2020, the Court held approximately 9 hours of oral argument focused on the merits of the EPA's repeal of the Clean Power Plan (CPP) and its replacement of that regulation with the ACE Rule.

On January 19, 2021, the U.S. Court of Appeals for the D.C. Circuit issued a 2-1 [opinion](#) vacating the Trump EPA's rules rescinding the CPP and replacing it with the ACE Rule. The majority opinion held that the Clean Air Act does not constrain EPA to "inside the fence" mechanisms to achieve emissions reductions, greenhouse gases from electric generating units in this instance. The order further rejected the replacement ACE Rule because it was premised on what the court viewed as an overly constrained view of the agency's authority. The Court remanded the rulemaking to EPA for the agency to reassess how it regulates greenhouse gas emissions from power plants. Judges Millett and Pillard (both Obama appointees) supported the full opinion, while Judge Walker (a Trump appointee) wrote a statement concurring in part and dissenting in part.

More recently, on February 12, 2021, EPA filed a motion to partially stay the D.C. Circuit's mandate, which dictates when EPA would be required to implement the court's order. The motion stated that EPA understands the Court's decision as leaving neither the CPP nor ACE rules in effect, and thus no EPA regulation in place with respect to greenhouse gas emissions from power plants. The motion also states that EPA is therefore obligated to propose and promulgate a new rulemaking under Clean Air Act Section 111(d) to replace such regulation(s). On February 22, 2021, the D.C. Circuit granted EPA's unopposed motion for a partial stay of issuance of the mandate and requested status reports from EPA at 90-day intervals.

Please contact Redacted - PII **with any questions.**

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hardrock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings *via* a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. The Administration did not include this final rule in its non-exclusive listing of EPA actions to review as part of President Biden’s [Executive Order](#) on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Please contact** *

Redacted - PII

with any questions.

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020.

Separately, EPA proposed in December 2020 a guidance document that identifies one additional factor for consideration when evaluating whether and how to perform a “functional equivalent” analysis; specifically the “design and performance of the system or facility from which the pollutant is released.” EPA finalized this [guidance](#) on January 14, 2021. While a guidance document such as this does not have the force and effect of law, it is likely that the Biden EPA may reevaluate this approach with respect to the “functional equivalent” analysis.

Please contact [Redacted - PII] **with any questions.**

HFC Phasedown Legislation

There are two issues on our agenda following-up on the enactment of the American Innovation and Manufacturing (AIM) Act: 1) President Biden’s January 27, 2021 executive order on climate priorities directed the Secretary of State to prepare a package within 60 days to send the Kigali amendment to the Senate for ratification. The Chamber is re-engaging a coalition of our member trade associations to support ratification. 2) EPA has 270 days to promulgate several rules, including allocations to implement the AIM Act. The Chamber will work with our members to ensure the business community’s priorities are included in the final regulation.

Please contact [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Chamber is joining the American Chemistry Council, the National Association of Manufacturers, and other members and trades to develop Save Our Seas 3.0 and other recycling infrastructure and marine debris priorities. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

EPA issued their final actions in December to retain the current NAAQS standards for both ozone and PM, designating both actions effective immediately. EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM2.5 NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m3 to 12 ug/m3. The Ozone standards were last tightened in 2015, when the agency lowered the ambient standards from 75 to 70 parts per million. The Chamber testified at both the EPA PM and ozone NAAQS public hearings supporting EPA’s retention of the current standards and submitted more detailed coalition comments on the proposals. Environmental groups and states have filed lawsuits over the last couple weeks challenging the retention of the current PM and ozone NAAQS standards, respectively. The Chamber along with other trades have intervened to support the retention of the current standards. Both rules have been identified by the Biden administration for reconsideration of the Trump decisions. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

- **PFAS**

The Chamber and our coalition of companies and trades sent our policy principles focusing on sound science, risk-based regulations, including finalizing the national

Maximum Contaminant Level for PFOA and PFOS under the Safe Drinking Water Act to Administrator Regan on March 11, 2021.

- The coalition provided comments in response to EPA's interim guidance and PFAS waste disposal and destruction. The guidance was prepared in response to an amendment to the FY2020 National Defense Authorization Act that requires development and update every three years. EPA also issued an [unregulated contaminant water monitoring rule, which includes 29 PFAS and also reissued the proposed regulatory determination on PFOA and PFOS. The Chamber is considering whether and how to provide comments.](#)
- During late February 2021, Senator Gillibrand (D-NY) and Rep. Maloney (NY-12) introduced the [PFAS Firefighters Protection Act](#) which calls for prohibiting use of AFFF by 2024. The [Bipartisan PFAS Task Force](#), led by Reps Kildee (MI-05) and Fitzpatrick (PA-01) launched its agenda, including Rep. Dingell's PFAS Action Act, which will likely be introduced this week. Other priorities such as banning PFAS in plastic food packaging could also move forward.

Please contact [Redacted - PII]
[Redacted - PII] **with any questions or to get involved.**

Resilience

- The Chamber drafted a [blog](#) of policy suggestions on resilience for collaboration between Congress and the administration. We are also working on convening a workshop between the Council on Infrastructure Financing Authorities and state emergency managers to share experiences on implementing the Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act. These policy suggestions were also included in recent testimony before the House Committee on Transportation and Infrastructure.

Please contact [Redacted - PII] **with any questions.**

TSCA

The Chamber continues to be active on regulatory issues related to the Toxic Substances and Control Act (TSCA). In 2020, the Chamber worked with a coalition of trade groups that requested that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. This effort resulted in EPA announcing plans for such a rulemaking in the fall 2020 regulatory agenda. The Chamber is now working with partner trades to formally encourage the Biden Administration to carry on with these risk management plans. [The Chamber led a coalition letter on March 11, 2021](#) to Administrator Regan conveying the importance of framework rulemaking and encouraging Regan's EPA to lead this work. The letter had 20 signatories and we are working with EPA staff now to coordinate a meeting with the trades who signed on to discuss the letter. Meanwhile, the Administration is considering

revisions pertaining to an earlier step in the chemical regulation process—risk evaluation. The Chamber expects to continue to engage on issues related to both risk evaluation and risk management rulemakings and welcomes member input on the issue. **Please contact** [Redacted - PII] **with any questions.**

Stormwater Innovation Principles

The Chamber is providing comments to the House Committee on Transportation and Infrastructure on the reauthorization of the Clean Water State Revolving Funds including grant programs on stormwater reuse issues. **Please contact** [Redacted - PII] **with any questions.**

Water Infrastructure and Policy Priorities

- The House Committee on Transportation and Infrastructure Committee recently introduced the [Water Quality and Job Creation Act of 2021](#), which includes \$40 billion over five years for the Clean Water SRF and a provision providing \$200 M per year over four years in grants to wastewater systems to treat PFAS and other emerging contaminants. The Chamber endorsed this legislation. The Senate Committee on Environment and Public Works Democrats and Republicans are close to reaching a bipartisan agreement on a water infrastructure approach. Here are our [2021 water policy priorities](#) for your consideration. **Please contact** [Redacted - PII] **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber joined a coalition supporting an amendment by Senator Capito to the recent COVID relief package in the Senate to prevent the rule from being revoked. **Please contact** [Redacted - PII] **with any questions.**

EPA Cost-Benefit Analysis

On December 9, 2020, EPA finalized a rule that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, we have met with OMB to support the rule and emphasize the importance of transparency and consistency in developing the agency’s cost-benefit analyses for rulemakings. Earlier in this process, the Chamber issued a statement, presented [testimony](#) at the agency’s public hearing on the rule, launched an advocacy [webpage](#), and submitted [coalition comments](#) in conjunction with several other trades. The rule is now under litigation and is also under review for reconsideration by the Biden Administration. **Please**

contact [Redacted - PII]
[Redacted - PII] *with any questions.*

PIP (3:1)

On March 4, 2021, [the Chamber submitted comments](#) to the EPA seeking an extension of the compliance timeframe to the EPA's final rule on Phenol, Isopropylated Phosphate, also known as PIP (3:1). EPA's final rule published on January 6, 2021 mandated that all products with PIP (3:1) be removed from commerce entirely within 60 days – which was March 8, 2021. The rule and the 60-day timeline for compliance would have a drastic negative impact on supply chains and the economy, given that PIP (3:1) is commonly used in the production of electrical components and in electronics. On March 8, 2021, the EPA announced a 180-day no action assurance and a 60-day comment period. The Chamber is planning to submit coalition comments during the comment period.

If your organization will be impacted by PIP (3:1), please reach out to Mary. We'd appreciate your input on coalition comments.

Please contact [Redacted - PII] *with any questions.*

Energy and Environment Committees Read-Ahead Materials

April 21, 2021



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Environment & Agriculture

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Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Nationally Determined Contribution

On March 15th, the Chamber submitted to the White House a set of [principles and priorities](#) aimed at informing the Biden Administration's effort to develop a revised Nationally Determined Contribution for submission under the Paris Climate Agreement. The document details 8 high-level business community priorities for incorporation into the NDC, which is expected to be announced in late April. We are calling for reducing emissions as low as we can as fast as we can, while ensuring that any national targets and timetables are realistic, achievable, appropriately account for U.S. economic interests, and work to address impacts to trade-exposed, hard-to-adapt, and energy-intensive sectors. President Biden is expected to announce a revised NDC on April 22nd. **Please contact** Redacted - PII **with any questions.**

Regulatory Tracker

We have assembled a regulatory tracker that provides brief summaries of important energy and environmental regulations and other policies that were issued in the Trump administration that may be rescinded or revised by the Biden administration. The Biden Climate Science executive order directed agencies to review every rulemaking issued during the Trump Administration to determine whether to suspend, revise, or rescind. The regulatory tracker, attached to the email that went out today, includes almost 80 rulemakings and other policy actions, many of which were identified by the Biden White House in a preliminary list.

President Biden has issued dozens of executive actions including a memo to all agencies called, "[Modernizing Regulatory Review](#)" that calls for updating the process that OIRA has followed for three decades when reviewing agencies' draft rulemakings. The memo also directs OIRA to update their regulatory cost-benefit guidelines that agencies are to follow when developing rulemakings, last issued in 2003, and for OIRA to focus on promoting rules that would yield significant benefits for disadvantaged communities.

Also of note, EPA's general counsel issued a [memo](#) to DOJ requesting that DOJ "seek and obtain abeyances or stays of proceedings in pending litigation seeking judicial review." **Please contact** Redacted - PII **with any questions.**

Updating the Social Cost of Carbon

As part of the Climate Science order issued on January 20, 2021, the President directed the interagency working group on the social cost of greenhouse gases to update the social costs of carbon, methane, and nitrous oxide, first with interim values, followed by final figures no later than January 2022. In February, the IWG released interim guidance that restores Obama-era valuation estimates, includes \$51 per metric ton of carbon dioxide at a 3% discount rate.

Meanwhile, the Chamber joined a coalition of trades [calling for a robust public engagement process](#) as the IWG considers longer-term revisions. These revisions to the SCC will likely

incorporate the international values and lower discount rates, which could increase the benefit estimates in rulemakings substantially, ultimately supporting more stringent regulatory actions. These estimates would primarily be used in federal regulation, but also in federal procurement, permitting decisions, and loans. **Please contact** [Redacted - PII]

[Redacted - PII]

with any questions.

Federal Lands Leasing Ban

On January 27th, 2020, President Biden issued [Executive Order 14008](#), which among other things, indefinitely bans new oil and natural gas leasing on federal lands and waters. This action follows on the January 20th, [Secretarial Order](#) revoking normal delegation of authority for 60 days to Interior's bureaus of the authority to issue new leases, lease amendments, permits, etc. During this indefinite ban, the EO directs Interior to reassess the fossil fuel leasing programs as well as the respective royalty processes. The Chamber submitted [comments](#) to the Department of the Interior in response to this ban.

Federal lands and waters make up 22% of total us oil production and 12% total natural gas production. The current ban has created significant uncertainty for operators and curtailed investment in future exploration and production. Partnering with our Federation members, the Chamber will continue to aggressively explain how these policies are nearsighted and counterproductive to growing the economy and reducing greenhouse gas emissions. **Please contact Christopher Guith** [Redacted - PII] **with any questions.**

Endangered Species Act Reform

On December 16, 2020, the Department of the Interior (DOI) jointly with Department of Commerce (DOC) issued their [final rule](#) proposal that would add a definition of "habitat" to the regulations governing the listing of endangered and threatened species and designation of critical habitat under the Endangered Species Act (ESA). The final rule was effective on January 15, 2021 avoiding the Biden freeze memo that could have extended the effective date of the rule. In the recent Supreme Court ruling in *Weyerhaeuser Co. v. U.S. FWS*, the court explained that any area that meets the narrow category of critical habitat must logically be habitat. However, neither agency had yet established a definition for "habitat" although the statute provides a definition for "critical habitat." The final definition includes both temporal and physical qualifying elements, but is a broader definition than the proposal as it would include physical places that currently or periodically support a species. The Chamber [submitted comments](#) on the proposed rule suggesting that 'habitat' should only include places where the existing attributes currently exist to preclude agencies from requiring a place to be modified to support a species.

In a separate [final rule](#) issued on December 18, 2020, DOI finalized clarifications to the agency's consideration of benefits of both including and excluding specific habitat segments in critical habitat designations. The final rule was effective on January 19, 2021, also avoiding the Biden freeze memo that would have extended the effective date of the rule. **Please contact**

Christopher Guith

Redacted - PII

Redacted - PII

with any questions.

Electric Sector Supply Chain Activities

On January 20, 2021, one of President Biden's first [executive orders](#) (EOs) suspended for ninety (90) days the effectiveness of the Trump Administration's May 1, 2020, [executive order](#) which sought to limit the suppliers of electric grid equipment and prohibit the purchase and use of such equipment from countries deemed adversarial to domestic grid security (the "BPS EO"). Following this suspension, we received direct confirmation from the Department of Energy (DOE) that the suspension also applies to the [Prohibition Order](#) that DOE had issued on December 17, 2020. The Prohibition Order sought to specifically ban numerous categories of equipment, firmware, and software at or within bulk power system facilities that serve or support critical defense facilities. However, subsequent FAQ guidance from DOE, as well as inquiries from supply chain customers, have made unclear the current applicability and enforceability of the Prohibition Order. Given these developments, the Chamber is engaging with its electric utility and impacted supply chain members, along with other stakeholders, to provide significant input to DOE as it reevaluates the BPS EO, the Prohibition Order, and what additional activities DOE may undertake with respect to the bulk power system supply chain. Among other outreach, the Chamber on March 1, 2021, submitted a [letter](#) to Secretary of Energy Granholm and key White House officials requesting that DOE undertake meaningful outreach with bulk power system supply chain stakeholders before DOE determines its next steps. This letter leverages some of the points we previously filed with DOE in [comments](#) responsive to the Request for Information DOE issued in response to the BPS EO. On March 9, 2021, the Chamber also transmitted clarifying questions to key DOE personnel, following the development of a comprehensive list of questions with its bulk power system supply chain working group. The Chamber has scheduled a meeting with key DOE staff to further discuss the agency's activities addressing bulk power system supply chain security.

On a separate track, the Federal Energy Regulatory Commission (FERC) on September 17, 2020, issued its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its members, the Chamber submitted [comments](#) responsive to FERC's NOI on November 23, 2020. Further action by FERC responsive to the NOI is anticipated. **Please contact** Redacted - PII *with any questions.*

Executive Order on America's Supply Chains

On February 24, 2021, President Biden issued [Executive Order 14017](#), "America's Supply Chains." This executive order directs an immediate 100-day review across federal agencies to address vulnerabilities in the supply chains of four key product areas: pharmaceuticals and active pharmaceutical ingredients; critical minerals, including rare earths; semiconductors and advanced packaging; and large capacity batteries, such as those used in electric vehicles. In addition, the order calls for a more in-depth one-year review of a broader set of U.S. supply chains. This longer review includes six key sectors: the energy sector industrial base; the information and communications technology (ICT) industrial base; the transportation industrial

base; the defense industrial base; the public health and biological preparedness industrial base; and the supply chains for agricultural commodities and food production. The Chamber has established a cross-sectoral internal working group to coordinate the Chamber's collection of information and analysis, as well as to formulate the Chamber's advocacy, regarding this far-reaching executive order. Most recently, on April 14, 2021, the Chamber submitted [comments](#) responsive to the Department of Energy's March 23, 2021, [Request for Information](#) regarding risks in the high-capacity battery supply chain, including as it relates to batteries for electric vehicles, data centers and telecommunications, and consumer devices. **Please contact** Redacted - PII **with any** Redacted - PII **questions.**

Energy Innovation Legislation

In late December, the Energy Act of 2020 was included in omnibus appropriations legislation that was signed into law just before adjournment of the 116th Congress. Passage of the legislation completed work on one of the Chamber's top legislative priorities in 2020. The Chamber worked closely with members of Congress and key committee staff on both sides of the aisle to craft and mobilize support for the bill and the dozens of individual pieces of legislation that were included in it. In response, Marty Durbin issued a [statement](#) noting that successful passage of the Energy Act proves "there is common ground on which all sides of the debate can come together to begin to address climate change, promote American technological leadership, and foster continued economic growth." In the weeks and months ahead, the Chamber will work to ensure the individual programs and activities authorized by the Energy Act are fully funded through the appropriations process. Along these lines, on April 9, 2021, the Chamber sent a [letter](#) to the Chairmen and Ranking Members of the House and Senate appropriations committees urging them to sufficiently fund the Energy Act of 2020 in their fiscal year 2022 appropriations legislation and within the Energy and Water Appropriations bill, particularly. **Please contact** Redacted - PII Redacted - PII **with questions.**

EPA MATS Rule

On April 16, 2020, the EPA issued its [final rule](#) modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA's proposal to eliminate the "appropriate and necessary" finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the "appropriate and necessary" filing, while retaining the compliance obligations therein. On January 20, 2021, an early Biden Administration [Executive Order](#) committed to review a significant number of EPA rules and regulations, including the MATS final rule published on May 22, 2020. While lawsuits are also pending on this rule, we anticipate that the Biden Administration's review of this rule could moot some of that litigation through the reinstatement of the "appropriate and

necessary” finding noted above. However, EPA revisions to this final rule could provide challenges for the remaining coal fleet if aggressive modifications to the accompanying Residual Risk and Technology Review are pursued. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

FERC Pipeline Certification Regulations

On April 19, 2018, the Federal Energy Regulatory Commission (FERC) issued a [Notice of Inquiry](#) (NOI) initiating a review of its 1999 interstate natural gas Certificate Policy Statement, which the Commission utilizes to guide its evaluation of natural gas pipeline infrastructure projects. The Global Energy Institute submitted [comments](#) responsive to this NOI on July 25, 2018. On February 18, 2021, FERC issued a [revised NOI](#) in the same docket (PL18-1-000), reiterating a number of the questions posed in 2018 while adding a number of new and revised questions and an additional broad area of inquiry, which is focused on FERC’s consideration of the effects of its pipeline certification process on environmental justice communities. FERC’s aim with the issuance is to “refresh the record and provide updated information and additional viewpoints to help the Commission assess its policy.” The Chamber is currently evaluating the merits of submitting additional comments in this docket, which are currently scheduled to be due on May 26, 2021, pursuant to a Notice Extending Time for Comments issued by FERC on March 31, 2021. **Please contact** [Redacted - PII] **with any questions.**

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the “one-mile rule” used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities’ access to wholesale markets, among other things. Concurrent with FERC’s finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC’s final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020. A number of lawsuits challenging FERC’s final rule on PURPA have now been filed and consolidated in the 9th Circuit Court of Appeals. A briefing order adopting the parties’ briefing proposal has now been adopted by the 9th Circuit, and respondent-intervenor briefs and amicus briefs in support of the PURPA modernization will be due on October 27, 2021. The Chamber anticipates playing a role as an amicus, with industry allies, in defense of PURPA’s modernization. **Please contact** [Redacted - PII] **with any questions.**

Migratory Bird Treaty Act

On January 7, 2021, the U.S. Fish and Wildlife Service finalized a rulemaking that codified an update to the FWS's interpretation that the Migratory Bird Treaty Act's ("MBTA") prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. As the final rule was not effective until after January 20, 2021, the Biden administration issued extended the effective date of the rule, which is now in effect as of March 8, 2021. Shortly following the effective date of the Trump final rule, the FWS sent a proposed rule on MBTA to the White House for interagency review. This final rule is expected to be step one of a two-step regulatory process that would first rescind the Trump final rule and in a separate action proposes the Biden interpretation of MBTA incidental take provisions. **Please contact Christopher**

Guith [Redacted - PII] **with any questions.**

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy — energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others – to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- The Chamber's Unlock American Investment coalition will be sending a letter to Brenda Mallory following her confirmation last week as the chair of the White House Council on Environmental Quality. The letter will request a meeting with chair Mallory to discuss federal permitting improvements.
- Rep. Sam Graves introduced the Building U.S. Infrastructure through Limited Delays & Efficient Reviews (BUILDER) Act that would help drive more efficient, timely, and effective NEPA environmental reviews.
- Five lawsuits have been filed by environmental groups and state attorneys general challenging the CEQ NEPA final rulemaking. Four of the lawsuits have been put in abeyance while the Western District of VA case is still proceeding. The Chamber is currently collaborating with eight other trade associations on the best way to provide legal support for the NEPA updates and has intervened or filed to intervene in all five cases. **Please contact** [Redacted - PII] **with any questions.**

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

The years-long negotiations between the Federal government, California, and automakers over fuel economy and greenhouse gas (GHG) standards is expected to continue in the Biden Administration. Since 2019, the Chamber has become more active in engaging in these issues, actively lobbying for middle-ground solutions that deliver steady fuel economy gains, preserve a single national market for auto sales and unite stakeholders.

In 2020, the Trump Administration finalized rules known as “SAFE 1” (rescinding California’s special Clean Air Act waiver to set standards more stringent than the federal government) and “SAFE 2” (revised passenger vehicle fuel economy standards for model years 2021-2026). The Biden Administration has committed to reconsidering both rules, with Executive Order 13990 directing EPA to propose revisions to SAFE 1 by the end of April 2021, and SAFE 2 by July 2021. Meanwhile, on February 8, 2021, the D.C. Circuit granted the Biden Administration’s request to place litigation regarding the SAFE 1 rule in abeyance. The Chamber intends to remain engaged on this issue and seek a middle-ground solutions that are acceptable to its broad membership.

Please contact [Redacted - PII] **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019 the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration’s Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA’s CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber’s [brief](#), submitted primarily in defense of the EPA’s repeal of the CPP, was submitted on July 16, 2020. On October 8, 2020, the Court held approximately 9 hours of oral argument focused on the merits of the EPA’s repeal of the Clean Power Plan (CPP) and its replacement of that regulation with the ACE Rule.

On January 19, 2021, the U.S. Court of Appeals for the D.C. Circuit issued a 2-1 [opinion](#) vacating the Trump EPA’s rules rescinding the CPP and replacing it with the ACE Rule. The majority opinion held that the Clean Air Act does not constrain EPA to “inside the fence” mechanisms to achieve emissions reductions, greenhouse gases from electric generating units in this instance. The order further rejected the replacement ACE Rule because it was premised on what the court viewed as an overly constrained view of the agency’s authority. The Court remanded the rulemaking to EPA for the agency to reassess how it regulates greenhouse gas emissions from power plants. Judges Millett and Pillard (both Obama appointees) supported the full opinion, while Judge Walker (a Trump appointee) wrote a statement concurring in part and dissenting in part.

More recently, on February 12, 2021, EPA filed a motion to partially stay the D.C. Circuit’s mandate, which dictates when EPA would be required to implement the court’s order. The motion stated that EPA understands the Court’s decision as leaving neither the CPP nor ACE rules in effect, and thus no EPA regulation in place with respect to greenhouse gas emissions from power plants. The motion also states that EPA is therefore obligated to propose and promulgate a new rulemaking under Clean Air Act Section 111(d) to replace such regulation(s). On February 22, 2021, the D.C. Circuit granted EPA’s unopposed motion for a partial stay of issuance of the mandate and requested status reports from EPA at 90-day intervals.

Please contact [Redacted - PII] **with any questions.**

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hard rock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings via a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. The Administration did not include this final rule in its non-exhaustive listing of EPA actions to review as part of President Biden’s [Executive Order](#) on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Please contact** Redacted - PII

Redacted - PII

with any questions.

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to a navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020.

Separately, EPA proposed in December 2020 a guidance document that identifies one additional factor for consideration when evaluating whether and how to perform a “functional equivalent” analysis; specifically the “design and performance of the system or facility from which the pollutant is released.” EPA finalized this [guidance](#) on January 14, 2021. While a guidance document such as this does not have the force and effect of law, it is likely that the Biden EPA may reevaluate this approach with respect to the “functional equivalent” analysis.

Please contact [Redacted - PII] **with any questions.**

HFC Phasedown Legislation

There are two issues on our agenda following-up on the enactment of the American Innovation and Manufacturing (AIM) Act: 1) President Biden’s January 27, 2021 executive order on climate priorities directed the Secretary of State to prepare a package within 60 days to send the Kigali amendment to the Senate for ratification. These documents have been provided but the White House has not yet submitted the treaty to the Senate. The Chamber, ACC, and NAM are holding informal discussions with Senate staff to support ratification. EPA has 270 days to promulgate several rules, including allocations to implement the AIM Act. The rule is currently under review by OMB. The Chamber will work with our members to ensure the business community’s priorities are included in the final regulation.

Please contact [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Chamber is joining the American Chemistry Council, the National Association of Manufacturers, and other members and trades to develop Save Our Seas 3.0 and other recycling infrastructure and marine debris priorities, including Basel Convention implementing legislation. **Please contact** [Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

EPA issued their final actions in December to retain the current NAAQS standards for both ozone and PM, designating both actions effective immediately. EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM2.5 NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m3 to 12 ug/m3. The Ozone standards were last tightened in 2015, when the agency lowered the ambient standards from 75 to 70 parts per million. The Chamber testified at both the EPA PM and ozone NAAQS public hearings supporting EPA’s retention of the current standards and submitted more detailed coalition comments on the proposals. Environmental groups and states have filed lawsuits over the last couple weeks challenging the retention of the current PM and ozone NAAQS standards, respectively. The Chamber along with other trades have intervened to support the retention of the current standards. Both rules have been identified by the Biden administration for reconsideration of the Trump decisions and several petitions have been filed by state AGs and environmental groups to overturn the recent Trump rules. **Please contact**

[Redacted - PII] **with any questions.**

PFAS

The Chamber and our coalition of companies and trades sent our policy principles focusing on sound science, risk-based regulations, including finalizing the national Maximum Contaminant Level for PFOA and PFOS under the Safe Drinking Water Act to Administrator Regan on March 11, 2021.

- The coalition provided comments in response to EPA's interim guidance and PFAS waste disposal and destruction. The guidance was prepared in response to an amendment to the FY2020 National Defense Authorization Act that requires development and update every three years. EPA also issued an unregulated contaminant water monitoring rule, which includes 29 PFAS and also reissued the proposed regulatory determination on PFOA and PFOS. The Chamber is working with our coalition to provide comments.
- During late February 2021, Senator Gillibrand (D-NY) and Rep. Maloney (NY-12) introduced the [PFAS Firefighters Protection Act](#) which calls for prohibiting use of AFFF by 2024. The [Bipartisan PFAS Task Force](#), led by Reps Kildee (MI-05) and Fitzpatrick (PA-01) launched its agenda, including Rep. Dingell's PFAS Action Act, which will likely be introduced this week. Other priorities such as banning PFAS in plastic food packaging could also move forward.

Please contact [Redacted - PII]

[Redacted - PII] **with any questions or to get involved.**

Resilience

The Chamber drafted a [blog](#) of policy suggestions on resilience for collaboration between Congress and the administration. We are also working on convening a workshop between the Council on Infrastructure Financing Authorities and state emergency managers to share experiences on implementing the Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act. These policy suggestions were also included in recent testimony before the House Committee on Transportation and Infrastructure.

Please contact [Redacted - PII] **with any questions.**

TSCA

The Chamber continues to be active on regulatory issues related to the Toxic Substances and Control Act (TSCA). In 2020, the Chamber worked with a coalition of trade groups that requested that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. This effort resulted in EPA announcing plans for such a rulemaking in the fall 2020 regulatory agenda. The Chamber is now working with partner trades to formally encourage the Biden Administration to carry on with these risk management plans. [The Chamber led a coalition letter on March 11, 2021](#) to Administrator Regan conveying

the importance of framework rulemaking and encouraging Regan's EPA to lead this work. The letter had 20 signatories and we are working with EPA staff now to coordinate a meeting with the trades who signed on to discuss the letter. Meanwhile, the Administration is considering revisions pertaining to an earlier step in the chemical regulation process—risk evaluation. The Chamber expects to continue to engage on issues related to both risk evaluation and risk management rulemakings and welcomes member input on the issue. **Please contact** Redacted - PII

Redacted - PII **with any questions.**

Stormwater Innovation Principles

The Chamber is providing comments to the House Committee on Transportation and Infrastructure on the reauthorization of the Clean Water State Revolving Funds including grant programs on stormwater reuse issues. **Please contact** Redacted - PII

Redacted - PII **with any questions.**

Water Infrastructure and Policy Priorities

- The House Committee on Transportation and Infrastructure Committee recently introduced the [Water Quality and Job Creation Act of 2021](#), which includes \$40 billion over five years for the Clean Water SRF and a provision providing \$200 M per year over four years in grants to wastewater systems to treat PFAS and other emerging contaminants. The Chamber endorsed this legislation. The Senate Committee on Environment and Public Works reported S. 914, the Water and Wastewater Infrastructure Act of 2021. Floor time is likely for the week of April 18, 2021. The Chamber endorsed both proposals. Here are our [2021 water policy priorities](#) for your consideration.

Please contact Redacted - PII **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined "Waters of the United States" ("WOTUS") under the Clean Water Act ("CWA") and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies' efforts at the rule's signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber joined a coalition supporting an amendment by Senator Capito to the recent COVID relief package in the Senate and is supporting a resolution in the House, proposed by the Western Congressional Caucus to prevent the rule from being revoked. **Please contact**

Redacted - PII **with any questions.**

EPA Cost-Benefit Analysis

On December 9, 2020, EPA finalized a rule that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, we have met with OMB to support the rule and emphasize

the importance of transparency and consistency in developing the agency's cost-benefit analyses for rulemakings. Earlier in this process, the Chamber issued a statement, presented [testimony](#) at the agency's public hearing on the rule, launched an advocacy [webpage](#), and submitted [coalition comments](#) in conjunction with several other trades. The rule is now under litigation and is also under review for reconsideration by the Biden Administration. On April 8, 2021, the Biden Administration submitted a final rule to the White House for interagency review that would rescind the Trump rulemaking. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

PIP (3:1)

On March 4, 2021, [the Chamber submitted comments](#) to the EPA seeking an extension of the compliance timeframe to the EPA's final rule on Phenol, Isopropylated Phosphate, also known as PIP (3:1). EPA's final rule published on January 6, 2021 mandated that all products with PIP (3:1) be removed from commerce entirely within 60 days – which was March 8, 2021. The rule and the 60-day timeline for compliance would have a drastic negative impact on supply chains and the economy, given that PIP (3:1) is commonly used in the production of electrical components and in electronics. On March 8, 2021, the EPA announced a 180-day no action assurance and a [60-day comment period](#).

The Chamber is planning to submit comments during the comment period and we want your input. If your organization deals with the substance PIP (3:1) at all, please reach out to Mary. We can also help determine if you have PIP (3:1) in your supply chains, as it is commonly used in flame retardants, coatings, and electronic components. The comment period ends May 17. Please send all input to Mary by May 7.

Please contact [Redacted - PII] **with any questions.**

Energy and Environment Committees Read-Ahead Materials

May 19, 2021



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Environment & Agriculture

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Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Nationally Determined Contribution

On April 22nd, President Biden announced a revised U.S. National Determined Contribution (NDC) commitment as he opened the virtual Climate Leader's Summit. The pledge calls for reducing net economy-wide greenhouse gas emissions 50-52% below 2005 levels by 2030. In response, the Chamber issued a [statement](#) emphasizing that achieving the goal "will require new technology and new policy that is durable and has the support of bipartisan members of congress, consumers, business, and other stakeholders."

In March, the Chamber submitted to the White House a set of [principles and priorities](#) aimed at informing the Biden Administration's effort to develop a revised Nationally Determined Contribution for submission under the Paris Climate Agreement. The document details 8 high-level business community priorities for consideration as the NDC moves forward. Specifically, the Chamber calls for reducing emissions "as low as we can as fast as we can," while ensuring that any national targets and timetables are realistic, achievable, appropriately account for U.S. economic interests, and work to address impacts to trade-exposed, hard-to-adapt, and energy-intensive sectors. **Please contact** Redacted - PII **with any questions.**

Regulatory Tracker

We have assembled a regulatory tracker that provides brief summaries of important energy and environmental regulations and other policies that were issued in the Trump administration that may be rescinded or revised by the Biden administration. The Biden Climate Science executive order directed agencies to review every rulemaking issued during the Trump Administration to determine whether to suspend, revise, or rescind. The regulatory tracker includes almost 80 rulemakings and other policy actions, many of which were identified by the Biden White House in a preliminary list. Also of note, EPA's general counsel issued a [memo](#) to DOJ requesting that DOJ "seek and obtain abeyances or stays of proceedings in pending litigation seeking judicial review."

Although the Congressional Review Act (CRA) could be used to dismantle as many as 1,400 eligible Trump administration regulations, Congress only introduced six CRA disapproval resolutions, but none of those six have passed out of both chambers of Congress to-date. The deadlines for introducing CRA resolutions were April 4th in the House and May 19th in the Senate. The resolution to overturn the Trump oil and gas methane rule passed the Senate in late April, but has not yet passed out of the House. Limited floor time, and concern about CRA language that precludes the issuance of regulations "substantially the same as" disapproved regulations, is likely dampening CRA disapprovals.

Please contact Redacted - PII **with any questions.**

Updating the Social Cost of Carbon

On May 7, 2021, the Office of Management and Budget (OMB) issued a [notice](#) requesting comment on the interagency working group's recent interim update to the social costs of carbon, methane, and nitrous oxide. The IWG's restores Obama-era valuation estimates raising it to \$51 per metric ton of carbon dioxide at a 3% discount rate. These estimates have been applied to at least two EPA rulemakings so far including the Revised Cross-State Air Pollution Rule Update final rule and the EPA HFC phasedown proposed rule. The Chamber joined a coalition of trades [calling for a robust public engagement process](#) as the IWG considers longer-term revisions. We're working on comments to the OMB notice, which are due June 21, 2021.

Please contact [Redacted - PII]

[Redacted - PII] **with any questions.**

Federal Lands Leasing Ban

On January 27th, 2020, President Biden issued [Executive Order 14008](#), which among other things, indefinitely bans new oil and natural gas leasing on federal lands and waters. This action follows on the January 20th, [Secretarial Order](#) revoking normal delegation of authority for 60 days to Interior's bureaus of the authority to issue new leases, lease amendments, permits, etc. During this indefinite ban, the EO directs Interior to reassess the fossil fuel leasing programs as well as the respective royalty processes. The Chamber submitted [comments](#) to the Department of the Interior in response to this ban.

Federal lands and waters make up 22% of total us oil production and 12% total natural gas production. The current ban has created significant uncertainty for operators and curtailed investment in future exploration and production. Partnering with our Federation members, the Chamber will continue to aggressively explain how these policies are nearsighted and counterproductive to growing the economy and reducing greenhouse gas emissions. **Please contact Christopher Guith** [Redacted - PII] **with any questions.**

Endangered Species Act Reform

On December 16, 2020, the Department of the Interior (DOI) jointly with Department of Commerce (DOC) issued their [final rule](#) that would add a definition of "habitat" to the regulations governing the listing of endangered and threatened species and designation of critical habitat under the Endangered Species Act (ESA). The final rule was effective on January 15, 2021 avoiding the Biden freeze memo that could have extended the effective date of the rule. In the recent Supreme Court ruling in *Weyerhaeuser Co. v. U.S. FWS*, the court explained that any area that meets the narrow category of critical habitat must logically be habitat. However, neither agency had yet established a definition for "habitat" although the statute provides a definition for "critical habitat." The final definition includes both temporal and physical qualifying elements, but is a broader definition than the proposal as it would include physical places that currently or periodically support a species. The Chamber [submitted comments](#) on the proposed rule suggesting that 'habitat' should only include places where the

existing attributes currently exist to preclude agencies from requiring a place to be modified to support a species.

In a separate [final rule](#) issued on December 18, 2020, DOI finalized clarifications to the agency's consideration of benefits of both including and excluding specific habitat segments in critical habitat designations. The final rule was effective on January 19, 2021, also avoiding the Biden freeze memo that would have extended the effective date of the rule. **Please contact**

Christopher Guith

Redacted - PII

Redacted - PII

with any questions.

Electric Sector Supply Chain Activities

On January 20, 2021, one of President Biden's first [executive orders](#) (EOs) suspended for ninety (90) days the effectiveness of the Trump Administration's May 1, 2020, [executive order](#) which sought to limit the suppliers of electric grid equipment and prohibit the purchase and use of such equipment from countries deemed adversarial to domestic grid security (the "BPS EO"). Following this suspension, we received direct confirmation from the Department of Energy (DOE) that the suspension also applied to the [Prohibition Order](#) that DOE issued on December 17, 2020. The Prohibition Order sought to specifically ban numerous categories of equipment, firmware, and software at or within bulk power system facilities that serve or support critical defense facilities. However, subsequent FAQ guidance from DOE, as well as inquiries from supply chain customers, made unclear the applicability and enforceability of the Prohibition Order. In the wake of this confusion, and amongst less formal outreach, the Chamber on March 1, 2021, submitted a [letter](#) to Secretary of Energy Granholm and key White House officials requesting that DOE undertake meaningful outreach with bulk power system supply chain stakeholders before DOE determines its next steps. This letter leveraged some of the points we previously filed with DOE in [comments](#) responsive to the Request for Information DOE issued in response to the BPS EO.

On April 20, 2021, DOE [announced](#) its "100-Day Sprint" on bulk power system cybersecurity. This effort is focused on encouraging grid owners and operators to implement measures or technology that enhances the detection, mitigation, and forensic capabilities on their systems. Accompanying this initiative, DOE issued a [revocation](#) of the December Prohibition Order, and also issued a [new Request for Information](#) (the "2021 RFI") seeking additional stakeholder input in advance of additional activities by DOE directed at securing the bulk power system supply chain. The Chamber has held multiple conversations with high-level DOE personnel in the wake of these actions, and is also working with its Bulk Power System Supply Chain Working Group to develop comments responsive to DOE's 2021 RFI.

On a separate track, the Federal Energy Regulatory Commission (FERC) on September 17, 2020, issued its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its members, the Chamber submitted [comments](#) responsive to FERC's NOI on November 23, 2020. Further action by FERC responsive to the NOI is anticipated. **Please contact** Redacted - PII **with any questions.**

Executive Order on America's Supply Chains

On February 24, 2021, President Biden issued [Executive Order 14017](#), "America's Supply Chains." This executive order directs an immediate 100-day review across federal agencies to address vulnerabilities in the supply chains of four key product areas: pharmaceuticals and active pharmaceutical ingredients; critical minerals, including rare earths; semiconductors and advanced packaging; and large capacity batteries, such as those used in electric vehicles. In addition, the order calls for a more in-depth one-year review of a broader set of U.S. supply chain sectors focusing on: the energy sector industrial base; the information and communications technology (ICT) industrial base; the transportation industrial base; the defense industrial base; the public health and biological preparedness industrial base; and the supply chains for agricultural commodities and food production. The Chamber has established a cross-sectoral internal working group to coordinate the Chamber's collection of information and analysis, as well as to formulate the Chamber's advocacy, regarding this far-reaching executive order. On April 14, 2021, the Chamber submitted [comments](#) responsive to the Department of Energy's March 23, 2021, [Request for Information](#) regarding risks in the high-capacity battery supply chain, including as it relates to batteries for electric vehicles, data centers and telecommunications, and consumer devices. On April 28, 2021, the Chamber provided [comments](#) in response to the U.S. Department of Defense's [request for input](#) regarding risks in the supply chain for strategic and critical materials, and also joined [comments](#) submitted by the Council of Defense and Space Industry Associations addressing the same topic. **Please contact**

Redacted - PII with any questions.

Energy Innovation Legislation

In late December, the Energy Act of 2020 was included in omnibus appropriations legislation that was signed into law just before adjournment of the 116th Congress. Passage of the legislation completed work on one of the Chamber's top legislative priorities in 2020. The Chamber worked closely with members of Congress and key committee staff on both sides of the aisle to craft and mobilize support for the bill and the dozens of individual pieces of legislation that were included in it. In response, Marty Durbin issued a [statement](#) noting that successful passage of the Energy Act proves "there is common ground on which all sides of the debate can come together to begin to address climate change, promote American technological leadership, and foster continued economic growth." In the weeks and months ahead, the Chamber will work to ensure the individual programs and activities authorized by the Energy Act are fully funded through the appropriations process. Along these lines, on April 9, 2021, the Chamber sent a [letter](#) to the Chairmen and Ranking Members of the House and Senate appropriations committees urging them to sufficiently fund the Energy Act of 2020 in their fiscal year 2022 appropriations legislation and within the Energy and Water Appropriations bill, particularly. On May 4, the Chamber joined a [large coalition](#) of business and environment organizations calling on appropriators to proceed with a similar prioritization of spending on energy innovation. **Please contact**

Redacted - PII with questions.

EPA MATS Rule

On April 16, 2020, the EPA issued its [final rule](#) modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA's proposal to eliminate the "appropriate and necessary" finding underlying the emissions standards that have now been implemented across the impacted generating units.

Unfortunately, the MATS final rule stayed its course by removing the "appropriate and necessary" finding, while retaining the compliance obligations therein. On January 20, 2021, an early Biden Administration [Executive Order](#) committed to review a significant number of EPA rules and regulations, including the MATS final rule published on May 22, 2020. While lawsuits are also pending on this rule, we anticipate that the Biden Administration's review of this rule could moot some of that litigation through the reinstatement of the "appropriate and necessary" finding noted above. However, EPA revisions to this final rule could provide challenges for the remaining coal fleet if aggressive modifications to the accompanying Residual Risk and Technology Review are pursued. **Please contact** [Redacted - PII]

[Redacted - PII] **with any questions.**

FERC Pipeline Certification Regulations

On April 19, 2018, the Federal Energy Regulatory Commission (FERC) issued a [Notice of Inquiry](#) (NOI) initiating a review of its 1999 interstate natural gas Certificate Policy Statement, which the Commission utilizes to guide its evaluation of natural gas pipeline infrastructure projects. The Global Energy Institute submitted [comments](#) responsive to this NOI on July 25, 2018. On February 18, 2021, FERC issued a [revised NOI](#) in the same docket (PL18-1-000), reiterating a number of the questions posed in 2018 while adding a number of new and revised questions and an additional broad area of inquiry, which is focused on FERC's consideration of the effects of its pipeline certification process on environmental justice communities. FERC's aim with the issuance is to "refresh the record and provide updated information and additional viewpoints to help the Commission assess its policy." The Chamber is currently developing comments to supplement those it submitted in 2018, with such comments due to FERC on May 26, 2021.

Please contact [Redacted - PII] **with any questions.**

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the "one-mile rule" used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities' access to wholesale markets, among other things. Concurrent

with FERC's finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC's final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020. A number of lawsuits challenging FERC's final rule on PURPA have now been filed and consolidated in the 9th Circuit Court of Appeals. A briefing order adopting the parties' briefing proposal has now been adopted by the 9th Circuit, and respondent-intervenor briefs and amicus briefs in support of the PURPA modernization will be due on October 27, 2021. The Chamber anticipates playing a role as an amicus, with industry allies, in defense of PURPA's modernization. **Please contact** [Redacted - PII] **with any questions.**

Migratory Bird Treaty Act

On May 7, 2021, the U.S. Fish and Wildlife Service issued a [rule proposing](#) to revoke the Trump final rulemaking that the Migratory Bird Treaty Act's ("MBTA") prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. This is the first step the Biden administration is taking to roll-back the Trump rule that became effective on March 8, 2021. This proposed rule is expected to be step one of a two-step regulatory process that would first remove the Trump final rule and then separately issue a policy that would incorporate the Biden administration's interpretation of MBTA incidental take provisions. The Chamber [issued a statement](#) on May 7th and is developing comments in response to the May 7th notice, which are due by June 7, 2021.

Please contact Christopher Guith [Redacted - PII]
[Redacted - PII] **with any questions.**

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy — energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others – to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- The Chamber's Unlock American Investment coalition will be meeting with CEQ Chair Brenda Mallory on May 20, 2021, to talk about the importance of NEPA permitting updates for the business community.
- On May 13, 2021, we heard from Rep. Sam Graves who introduced the Building U.S. Infrastructure through Limited Delays & Efficient Reviews (BUILDER) Act and Rep. Rodney Davis who introduced the One Federal Decision Act as part of GEI's *EnergyInnovates* webinar event on [Transmission and Permitting](#). Both Congressmen spoke about their legislation and the need for more efficient, timely, and effective NEPA environmental reviews.
- Five lawsuits have been filed by environmental groups and state attorneys general challenging the CEQ NEPA final rulemaking. Four of the lawsuits have been put in

abeyance while the Western District of VA case is still proceeding. The Chamber is currently collaborating with eight other trade associations on the best way to provide legal support for the NEPA updates and has intervened or filed to intervene in all five cases. **Please contact** [Redacted - PII] **with any questions.**

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule

The years-long negotiations between the Federal government, California, and automakers over fuel economy and greenhouse gas (GHG) standards is expected to continue in the Biden Administration. Since 2019, the Chamber has become more active in engaging in these issues, actively lobbying for middle-ground solutions that deliver steady fuel economy gains, preserve a single national market for auto sales and unite stakeholders.

In 2020, the Trump Administration finalized rules known as “SAFE 1” (rescinding California’s special Clean Air Act waiver to set standards more stringent than the federal government) and “SAFE 2” (revised passenger vehicle fuel economy standards for model years 2021-2026). The Biden Administration has committed to reconsidering both rules, with Executive Order 13990 directing EPA to propose revisions to SAFE 1 by the end of April 2021, and SAFE 2 by July 2021. Meanwhile, on February 8, 2021, the D.C. Circuit granted the Biden Administration’s request to place litigation regarding the SAFE 1 rule in abeyance. The Chamber intends to remain engaged on this issue and seek a middle-ground solutions that are acceptable to its broad membership.

Please contact [Redacted - PII] **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019 the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration’s Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA’s CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber’s [brief](#), submitted primarily in defense of the EPA’s repeal of the CPP, was submitted on July 16, 2020. On October 8, 2020, the Court held oral argument on the merits of the EPA’s repeal of the CPP and its promulgation of the ACE Rule.

On January 19, 2021, the U.S. Court of Appeals for the D.C. Circuit issued a 2-1 [opinion](#) vacating the Trump EPA’s rules rescinding the CPP and replacing it with the ACE Rule. The majority opinion held that the Clean Air Act does not constrain EPA to “inside the fence” mechanisms to achieve greenhouse gas emissions reductions. The order further rejected the replacement ACE Rule as representing an overly constrained view of the agency’s authority. The Court remanded the rulemaking to EPA for the agency to reassess its power plant greenhouse gas regulations. Judges Millett and Pillard (both Obama appointees) supported the full opinion, while Judge Walker (a Trump appointee) wrote a statement concurring in part and dissenting in part.

On February 22, 2021, the D.C. Circuit granted EPA's unopposed motion for a partial stay of issuance of the mandate and requested status reports from EPA at 90-day intervals. On April 29, 2021, a group of states led by West Virginia filed with the U.S. Supreme Court a petition for cert. of the D.C. Circuit's ACE Rule decision. The North American Coal Corporation filed its own petition for cert. similarly challenging the D.C. Circuit's disposition of the ACE Rule. The Chamber is monitoring these developments.

Please contact Redacted - PII **with any questions.**

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"). This follows the Agency's decision not to impose such requirements on the hard rock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA's most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings via a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. The Administration did not include this final rule in its non-exhaustive listing of EPA actions to review as part of President Biden's [Executive Order](#) on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Please contact** Redacted - PII **with any questions.**

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act's permitting requirements. At issue was whether the Act "requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source," like groundwater. Many in the business community, including the Chamber, contended that the Act's permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the "functional equivalent to a direct discharge" from a point source to navigable water. Justice Breyer wrote

the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On May 4, 2020, the Supreme Court sent a related case involving a Kinder Morgan pipeline spill back to the U.S. Court of Appeals for the 4th Circuit, directing that court to evaluate the application of the new “functional equivalent” test to that controversy. On July 1, the Chamber signed onto a supplemental amicus brief asserting that the “functional equivalent” test should not be applied in that case, particularly on the record as developed. On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020.

Separately, EPA proposed in December 2020 a guidance document that identifies one additional factor for consideration when evaluating whether and how to perform a “functional equivalent” analysis; specifically the “design and performance of the system or facility from which the pollutant is released.” EPA finalized this [guidance](#) on January 14, 2021. While a guidance document such as this does not have the force and effect of law, it is anticipated that the Biden EPA will reevaluate this approach to the “functional equivalent” analysis. **Please contact** [Redacted - PII] **with any questions.**

HFC Phasedown Legislation

There are two issues on our agenda following-up on the enactment of the American Innovation and Manufacturing (AIM) Act: 1) President Biden’s January 27, 2021 executive order on climate priorities directed the Secretary of State to prepare a package within 60 days to send the Kigali amendment to the Senate for ratification. These documents have been provided but the White House has not yet submitted the treaty to the Senate. The Chamber, ACC, and NAM are holding informal discussions with Senate staff to support ratification. EPA has 270 days to promulgate several rules, including allocations to implement the AIM Act. EPA announced the allocation rule on April 30, 2021 and is expected to publish the proposed rule in the federal register on May 19th. The Chamber will work with our members to ensure the business community’s priorities are included in the final regulation.

Please contact [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Chamber is joining the American Chemistry Council, the National Association of Manufacturers, and other members and trades to develop Save Our Seas 3.0 and other recycling infrastructure and marine debris priorities, including Basel Convention implementing legislation. **Please contact** [Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

EPA issued their final actions in December to retain the current NAAQS standards for both ozone and PM, designating both actions effective immediately. EPA is required by the Clean Air

Act to review the NAAQS standards every five years. EPA last updated the PM2.5 NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m3 to 12 ug/m3. The Ozone standards were last tightened in 2015, when the agency lowered the ambient standards from 75 to 70 parts per million. Environmental groups and states filed lawsuits challenging the retention of the current PM and ozone NAAQS standards. The Chamber along with other trades have intervened to support the retention of the current standards. Both cases are currently being held in abeyance at the Biden administration's request while they reconsider the Trump decisions. Last week, the administration requested an additional 90-day abeyance of both the PM and ozone NAAQS cases. **Please contact** [Redacted - PII] [Redacted - PII] **with any questions.**

PFAS

The Chamber and our coalition of companies and trades sent our policy principles focusing on sound science, risk-based regulations, including finalizing the national Maximum Contaminant Level for PFOA and PFOS under the Safe Drinking Water Act to Administrator Regan on March 11, 2021.

- The coalition provided comments in response to EPA's interim guidance and PFAS waste disposal and destruction. The guidance was prepared in response to an amendment to the FY2020 National Defense Authorization Act that requires development and update every three years. EPA also issued an unregulated contaminant water monitoring rule, which includes 29 PFAS and also reissued the proposed regulatory determination on PFOA and PFOS. The Chamber is working with our coalition to provide comments.
- During late February 2021, Senator Gillibrand (D-NY) and Rep. Maloney (NY-12) introduced the [PFAS Firefighters Protection Act](#) which calls for prohibiting use of AFFF by 2024. The [Bipartisan PFAS Task Force](#), led by Reps Kildee (MI-05) and Fitzpatrick (PA-01) launched its agenda, including Rep. Dingell's PFAS Action Act, which will likely be introduced this week. Other priorities such as banning PFAS in plastic food packaging could also move forward.

Please contact [Redacted - PII]

[Redacted - PII]

with any questions or to get involved.

Resilience

The Chamber drafted a [blog](#) of policy suggestions on resilience for collaboration between Congress and the administration. We are also working on convening a workshop between the Council on Infrastructure Financing Authorities and state emergency managers to share experiences on implementing the Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act. These policy suggestions were also included in recent testimony before the House Committee on Transportation and Infrastructure.

Please contact [Redacted - PII] **with any questions.**

TSCA

The Chamber continues to be active on regulatory issues related to the Toxic Substances and Control Act (TSCA). In 2020, the Chamber worked with a coalition of trade groups that requested that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. This effort resulted in EPA announcing plans for such a rulemaking in the fall 2020 regulatory agenda. The Chamber is now working with partner trades to formally encourage the Biden Administration to carry on with these risk management plans. [The Chamber led a coalition letter on March 11, 2021](#) to Administrator Regan conveying the importance of framework rulemaking and encouraging Regan's EPA to lead this work. The letter had 20 signatories and we are working with EPA staff now to coordinate a meeting with the trades who signed on to discuss the letter. Meanwhile, the Administration is considering revisions pertaining to an earlier step in the chemical regulation process—risk evaluation. The Chamber expects to continue to engage on issues related to both risk evaluation and risk management rulemakings and welcomes member input on the issue. **Please contact** Redacted - PII

Redacted - PII **with any questions.**

Stormwater Innovation Principles

The Chamber is providing comments to the House Committee on Transportation and Infrastructure on the reauthorization of the Clean Water State Revolving Funds including grant programs on stormwater reuse issues.

Please contact Redacted - PII **with any questions.**

Water Infrastructure and Policy Priorities

- The House Committee on Transportation and Infrastructure Committee recently introduced the [Water Quality and Job Creation Act of 2021](#), which includes \$40 billion over five years for the Clean Water SRF and a provision providing \$200 M per year over four years in grants to wastewater systems to treat PFAS and other emerging contaminants. The Chamber endorsed this legislation. The Senate Committee on Environment and Public Works reported S. 914, the Water and Wastewater Infrastructure Act of 2021. Floor time is likely for the week of April 18, 2021. The Chamber endorsed both proposals. Here are our [2021 water policy priorities](#) for your consideration.

Please contact Redacted - PII **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined "Waters of the United States" ("WOTUS") under the Clean Water Act ("CWA") and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies' efforts at the rule's signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. The Chamber joined a coalition supporting an amendment by Senator Capito to the recent COVID relief package in the Senate and is supporting a resolution in the House, proposed

by the Western Congressional Caucus to prevent the rule from being revoked. **Please contact** [Redacted - PII] **with any questions.**

EPA Cost-Benefit Analysis

On May 13, 2021, EPA issued an [interim final rule](#) that rescinds the Trump rule that was issued to reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act (CAA) regulations. In the most recent notice, EPA identified several reasons why the agency rescinded the Trump rule referencing the procedural nature of the rule the permits the agency to issue an interim final rule to rescind the Trump rule. The Chamber had been strong supporters of the Trump regulatory process updates aimed at improving the transparency and consistency of the agency's cost-benefit analyses developed to support the agency's CAA rulemakings. The rescission rulemaking becomes effective on June 14, 2021, the same day that public comments are due on the interim final rule. **Please contact** [Redacted - PII] **with any questions.**

EPA Guidance Procedures and Portal

On May 12, 2021, EPA issued a [final rulemaking](#) to rescind the October 2020 rulemaking that established procedures for issuing, modifying, withdrawing, and using guidance documents. The Biden administration issued an executive order on January 20, 2021 revoking certain executive orders including EO 13891 that was the driver for EPA to develop their October 2020 rulemaking. EPA was one of 32 agencies that had issued rulemakings on guidance procedures and was also one of the agencies to have established a guidance portal where businesses could access the agency's guidance documents from one location. The agency's guidance portal has also been taken down as part of this recent action. The Chamber will continue to promote the importance of transparency with the issuance of agency guidance documents. **Please contact** [Redacted - PII] **with any questions.**

PIP (3:1)

On March 4, 2021, [the Chamber submitted comments](#) to the EPA seeking an extension of the compliance timeframe to the EPA's final rule on Phenol, Isopropylated Phosphate, also known as PIP (3:1). EPA's final rule published on January 6, 2021 mandated that all products with PIP (3:1) be removed from commerce entirely within 60 days – which was March 8, 2021. The rule and the 60-day timeline for compliance would have a drastic negative impact on supply chains and the economy, given that PIP (3:1) is commonly used in the production of electrical components and in electronics. The Chamber submitted comments to EPA within the extended comment period on May 17, 2021. If you would like to see the Chamber's comments, please reach out to Mary.

Please contact [Redacted - PII] **with any questions.**

Chemistry Solutions Working Group

The Chamber has formed a new working group – the Chemistry Solutions Working Group to convene all aspects of the chemistry supply chain to provide advocacy in this increasingly active policy space. We are meeting frequently to discuss many issues facing this sector and welcome any Chamber member with involvement in chemistry (downstream users included) to join us.

Please contact Redacted - PII ***with any questions or to join us.***

**Energy and Environment Committees
Read-Ahead Materials**

July 21, 2021



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Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Nationally Determined Contribution and COP 26

On April 22nd, President Biden announced a revised U.S. National Determined Contribution (NDC) commitment as he opened the virtual Climate Leader's Summit. The pledge calls for reducing net economy-wide greenhouse gas emissions 50-52% below 2005 levels by 2030. In response, the Chamber issued a [statement](#) emphasizing that achieving the goal "will require new technology and new policy that is durable and has the support of bipartisan members of congress, consumers, business, and other stakeholders."

In March 15th, the Chamber submitted to the White House a set of [principles and priorities](#) aimed at informing the Biden Administration's effort to develop a revised Nationally Determined Contribution for submission under the Paris Climate Agreement. The document details eight high-level business community priorities for incorporation into the NDC. We are calling for reducing emissions as low as we can, as fast as we can, at the pace of innovation, while ensuring that any national targets and timetables are realistic, achievable, appropriately account for U.S. economic interests, and work to address impacts to trade-exposed, hard-to-adapt, and energy-intensive sectors.

The Chamber is also closely engaged in activities leading up to the UN Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP 26) meeting this November in Glasgow, Scotland. Related to this, on July 15, the European Commission released its "Fit for 55" policy package, which includes details of a Carbon Border Adjustment Mechanism that has potentially significant implications for U.S. businesses. The Chamber issued a [statement](#) in response to the proposal and will be monitoring its developments over the coming months.

Please contact Redacted - PII ***with any questions.***

Latest OMB Regulatory Agenda

On June 11, 2021, agencies released their 2021 Spring Regulatory Agendas outlining their plans for regulatory actions that they plan to take over the next year. Many of the rulemakings outlined in the agency's individual Spring agendas include actions to rescind or revise Trump Administration rulemakings. As part of President Biden's Climate Science order, he directed agencies to review every rulemaking issued in the prior administration, but separately identified a list of 104 Trump rules as their top priorities for review. Below is a brief overview of a few agency's agendas:

- EPA's [agenda](#) includes almost 130 actions with 67 from the office of air, 29 from the office of chemical safety, and 15 from the office of water. A few noteworthy rules include proposed rules for [ethylene oxide](#), section 126 petitions for [MD](#) and [NY](#), [light duty GHG standards](#), [MATS v3](#), oil and gas methane standards for [new](#) and [existing](#) sources, multiple TSCA section 6 rules, and CWA section [401](#) and [404](#) rulemakings.

Announcements were also recently made on revising the PM NAAQS standards, WOTUS, RMP, and other rules.

- [DOI's agenda](#) includes almost 260 actions with the majority being related to endangered species act designations for individual species. Notable rulemakings include revisions to the [waste prevention](#), [fossil fuel leasing processes](#), [pipeline ROWs](#), [blowout preventers](#), ESA [lesser prairie chicken designation](#), [migratory bird](#) and [eagle](#) incidental take rules.
- [DOE's agenda](#) includes over 120 actions with the majority related to energy efficiency standards for appliances and commercial equipment. A few notable rulemakings include electric transmission at international boundaries, procedures for the export of electricity, energy efficiency standards for furnaces, hot water heaters, and other natural gas appliances.
- CEQ's agenda includes just five rulemakings including a NEPA GHG guidance, implementing regulations [phase 1](#) and [phase 2](#) updates, and [deadline rule for updates to the 2020 rule](#).
- [DOC's agenda](#) includes over 170 rulemakings with most coming out of the National Oceanic and Atmospheric Administration. A few notable rulemakings include ESA designating critical habitat [revisions and definition of habitat](#).

Please contact Redacted - PII **with any questions.**

Updating the Social Cost of Carbon

On May 7, 2021, the Office of Management and Budget (OMB) issued a notice requesting comment on the February interim update to the social costs of carbon, methane, and nitrous oxide (SC-GHG). The OMB notice requests comment on several topics including the best approach to implement the National Academy of Sciences recommendations; to account for climate risk, environmental justice, and intergenerational equity; the appropriate discount rate to account for intergenerational equity; the areas where to apply the SC-GHG including in decision-making, budgeting, and procurement.

The President reinstituted the interagency working group in the Climate Science order and directed them to issue an update to the SC-GHG, first with interim values, followed by final figures no later than January 2022. The February update restores Obama-era valuation estimates, includes \$51 per metric ton of carbon dioxide at a 3% discount rate.

Meanwhile, the Chamber pulled together a coalition of 23 trades that submitted joint comments on the OMB notice [calling for a robust public engagement process](#) as the IWG considers longer-term revisions.

Please contact Redacted - PII
Redacted - PII **with any questions.**

Federal Lands Leasing Ban

On June 15, 2021, Judge Terry Doughty of the Western District of Louisiana issued a preliminary injunction ordering new oil and gas leasing to restart on federal lands and waters nationwide,

holding that plaintiffs had shown a likelihood of success on the merits on their claim that DOI's leasing pause violated the Mineral Leasing Act (MLA) and Outer Continental Shelf Lands Act (OCSLA). On January 27th, 2020, President Biden issued [Executive Order 14008](#), which among other things, indefinitely bans new oil and natural gas leasing on federal lands and waters. This action followed on the January 20th, [Secretarial Order](#) revoking normal delegation of authority for 60 days to Interior's bureaus of the authority to issue new leases, lease amendments, permits, etc. During this indefinite ban, the EO directs Interior to reassess the fossil fuel leasing programs as well as the respective royalty processes. On June 1st, Interior Secretary Deb Haaland [suspended leases](#) in the Alaska National Wildlife Refuge (ANWR), citing a need for further environmental reviews.

Federal lands and waters make up 22% of total US oil production and 12% total natural gas production. The ban created significant uncertainty for operators and curtailed investment in future exploration and production. We partnered with our Federation members to aggressively explain how these policies are nearsighted and counterproductive to growing the economy and reducing greenhouse gas emissions.

Please contact Christopher Guith Redacted - PII *with any questions.*

Endangered Species Act Reform

On June 4, 2021, DOI announced it would be revising several of the Trump administration rules pertaining to the Endangered Species Act, announcing its plans to:

- Rescind the [December 17, 2020, regulations](#) that revised the FWS process for considering exclusions from critical habitat designations under section 4(b)(2) and propose to revert back to the joint 2016 FWS/NMFS regulations at 50 CFR 424.19.
- Rescind the regulatory definition of habitat for the purposes of critical habitat designation ([85 FR 81411; December 16, 2020](#)). FWS stated a regulatory definition is not required to designate critical habitat in compliance with a 2018 SCOTUS decision.
- Revise regulations (84 FR 45020; August 27, 2019) for listing species and designating critical habitat to reinstate prior language affirming that listing determinations are made "without reference to possible economic or other impacts of such determination."
- Revise regulations for interagency cooperation ([84 FR 44976; August 27, 2019](#)) governing section 7 consultation and "effects of the action."
- Reinstatement of the "blanket 4(d) rule," which was withdrawn by the previous Administration ([84 FR 44753; August 27, 2019](#)) and establish the default of automatically extending protections provided to endangered species to those listed as threatened, unless the FWS adopts a species-specific 4(d) rule.

Please contact Redacted - PII *with any questions.*

Electric Sector Supply Chain Activities

On January 20, 2021, one of President Biden's first [executive orders](#) (EOs) suspended for ninety (90) days the effectiveness of the Trump Administration's May 1, 2020, [executive order](#) which sought to limit the suppliers of electric grid equipment and prohibit the purchase and use of

such equipment from countries deemed adversarial to domestic grid security (the “BPS EO”). Following this suspension, we received direct confirmation from the Department of Energy (DOE) that the suspension also applied to the [Prohibition Order](#) that DOE issued on December 17, 2020. The Prohibition Order sought to specifically ban numerous categories of equipment, firmware, and software at or within bulk power system facilities that serve or support critical defense facilities. However, subsequent FAQ guidance from DOE, as well as inquiries from supply chain customers, made unclear the applicability and enforceability of the Prohibition Order. In the wake of this confusion, and amongst less formal outreach, the Chamber on March 1, 2021, submitted a [letter](#) to Secretary of Energy Granholm and key White House officials requesting that DOE undertake meaningful outreach with bulk power system supply chain stakeholders before DOE determines its next steps. This letter leveraged some of the points we previously filed with DOE in [comments](#) responsive to the Request for Information DOE issued in response to the BPS EO.

On April 20, 2021, DOE [announced](#) its “100-Day Sprint” on bulk power system cybersecurity. This effort is focused on encouraging grid owners and operators to implement measures or technology (including Neighborhood Keeper) that enhances the detection, mitigation, and forensic capabilities on their systems. Accompanying this initiative, DOE issued a [revocation](#) of the December Prohibition Order, and also issued a [new Request for Information](#) (the “2021 RFI”) seeking additional stakeholder input in advance of additional activities by DOE directed at securing the bulk power system supply chain. The Chamber has held multiple conversations with high-level DOE personnel in the wake of these actions, and worked extensively with its Bulk Power System Supply Chain Working Group to develop responsive [comments](#) to DOE’s 2021 RFI that were submitted on June 7, 2021. The Chamber is also collaborating with the Edison Electric Institute and the North American Transmission Forum on the development of a single repository or library to streamline the analysis and implementation of potential future supply chain restrictions.

On a separate track, the Federal Energy Regulatory Commission (FERC) on September 17, 2020, issued its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its members, the Chamber submitted [comments](#) responsive to FERC’s NOI on November 23, 2020. Further action by FERC responsive to the NOI is anticipated.

Please contact Redacted - PII *with any questions.*

Executive Order on America’s Supply Chains

On February 24, 2021, President Biden issued [Executive Order 14017](#), “America’s Supply Chains.” This executive order directs an immediate 100-day review across federal agencies to address vulnerabilities in the supply chains of four key product areas: pharmaceuticals and active pharmaceutical agreements; critical minerals, including rare earths; semiconductors and advanced packaging; and large capacity batteries, such as those used in electric vehicles. In addition, the order calls for a more in-depth one-year review of a broader set of U.S. supply chain sectors focusing on: the energy sector industrial base; the information and

communications technology (ICT) industrial base; the transportation industrial base; the defense industrial base; the public health and biological preparedness industrial base; and the supply chains for agricultural commodities and food production. The Chamber has established a cross-sectoral internal working group to coordinate the Chamber's collection of information and analysis, as well as to formulate the Chamber's advocacy, regarding this far-reaching executive order. On April 14, 2021, the Chamber submitted [comments](#) responsive to the Department of Energy's March 23, 2021, [Request for Information](#) regarding risks in the high-capacity battery supply chain, including as it relates to batteries for electric vehicles, data centers and telecommunications, and consumer devices. On April 28, 2021, the Chamber provided [comments](#) in response to the U.S. Department of Defense's [request for input](#) regarding risks in the supply chain for strategic and critical materials, and also joined [comments](#) submitted by the Council of Defense and Space Industry Associations addressing the same topic.

On June 8, 2021, the Administration issued a report entitled "[Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth](#)" that concludes the 100-day review. A [fact sheet](#) was also released. The report proposes a significant number of actions as part of a "whole of government" approach to strengthen the resilience of the supply chains for these four industries, including interagency task forces, new trade actions, and legislation that would support increased domestic production, invest in new production and processing of critical minerals, combat unfair trade practices, and strengthen reliance on key U.S. allies. This report was accompanied by a DOE-led National Blueprint for Lithium Batteries that details a number of specific steps the Administration plans to take to address concerns regarding sourcing and manufacturing related to electric vehicles. The Chamber is reviewing the recommendations in these reports and welcomes member input as we move forward.

Please contact Redacted - PII
Redacted - PII **with any questions.**

Energy Innovation Legislation

In late December, the Energy Act of 2020 was included in omnibus appropriations legislation that was signed into law just before adjournment of the 116th Congress. Passage of the legislation completed work on one of the Chamber's top legislative priorities in 2020. The Chamber worked closely with members of Congress and key committee staff on both sides of the aisle to craft and mobilize support for the bill and the dozens of individual pieces of legislation that were included in it. In response, Marty Durbin issued a [statement](#) noting that successful passage of the Energy Act proves "there is common ground on which all sides of the debate can come together to begin to address climate change, promote American technological leadership, and foster continued economic growth." As significant infrastructure legislation takes form, the Chamber is working to ensure the individual programs and activities authorized by the Energy Act are fully funded through the related budgeting and appropriations process.

Most recently, on July 16, the House Appropriations Committee passed the Energy and Water Appropriations legislation for fiscal year 2022 and included strong funding levels for most key

Energy Act of 2020 programs. Concurrently, Senate Energy and Natural Resources has also passed the bipartisan Energy Infrastructure Act, which aims to build upon a number of energy innovation issues that are also a priority of the Chamber.

Please contact [Redacted - PII]
[Redacted - PII] *with questions.*

EPA MATS Rule

On April 16, 2020, the EPA issued its [final rule](#) modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA's proposal to eliminate the "appropriate and necessary" finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the "appropriate and necessary" finding, while retaining the compliance obligations therein. On January 20, 2021, an early Biden Administration [Executive Order](#) committed to review a significant number of EPA rules and regulations, including the MATS final rule published on May 22, 2020. While lawsuits are also pending on this rule, we anticipate that the Biden Administration's review of this rule could moot some of that litigation through the reinstatement of the "appropriate and necessary" finding noted above. However, EPA has recently signaled that its forthcoming revisions to this final rule could provide challenges for the remaining coal fleet through a reassessment of the accompanying Residual Risk and Technology Review.

Please contact [Redacted - PII] *with any questions.*

FERC Transmission Reform Rulemaking

At its July 15, 2021 open meeting, the Federal Energy Regulatory Commission (FERC) initiated a rulemaking proceeding to reconsider the Commission's transmission planning, associated cost allocation, and generator interconnection processes. This monumental undertaking was launched with the issuance of an advance notice of proposed rulemaking (ANOPR) entitled "[Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection](#)." Among other things, the ANOPR asks how transmission planning should consider future scenarios, whether transmission providers should establish a process to identify geographic zones that have the potential for the development of large amounts of renewable generation, whether reforms are needed to improve the coordination between the regional transmission planning and cost allocation and generator interconnection processes; how to appropriately identify and allocate the costs of new transmission facilities, and whether participant funding of interconnection-related network upgrades may be proven to be unjust and unreasonable. The ANOPR also seeks comment regarding whether the current approach to oversight of transmission investment adequately protects customers. Comments responsive to the ANOPR will be due 75 after its publication in the Federal Register. The

Chamber welcomes input from its members on whether it should submit comments in this proceeding and as to the content of such potential comments.

Please contact [Redacted - PII] *with any questions.*

FERC Pipeline Certification Regulations

On April 19, 2018, FERC issued a [Notice of Inquiry](#) (NOI) initiating a review of its 1999 interstate natural gas Certificate Policy Statement, which the Commission utilizes to guide its evaluation of natural gas pipeline infrastructure projects. The Global Energy Institute submitted [comments](#) responsive to this NOI on July 25, 2018. On February 18, 2021, FERC issued a [revised NOI](#) in the same docket (PL18-1-000), reiterating a number of the questions posed in 2018 while adding a number of new and revised questions and an additional broad area of inquiry, which is focused on FERC's consideration of the effects of its pipeline certification process on environmental justice communities. FERC's aim with the issuance is to "refresh the record and provide updated information and additional viewpoints to help the Commission assess its policy." On May 26, 2021, the Chamber submitted [comments](#) responsive to this revised NOI. Commission action responsive to the submitted comments is anticipated later this year.

Please contact [Redacted - PII] *with any questions.*

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the "one-mile rule" used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities' access to wholesale markets, among other things. Concurrent with FERC's finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC's final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020.

A number of lawsuits challenging FERC's final rule on PURPA were filed and consolidated in the 9th Circuit Court of Appeals. On May 27, 2021, Petitioner Solar Energy Industry Association and Petitioner Montana Environmental Information Center, et al., submitted their opening briefs. Pursuant to a modified briefing schedule issued by the court on June 23, 2021, Intervenorors and amici curiae supporting the Petitioners now have their briefs due on July 23, 2021. FERC's respondent brief will now be due on October 21, 2021, and respondent-intervenor briefs and amicus briefs in support of FERC's PURPA final rule will be due on November 22, 2021. The

Chamber anticipates playing a role as an amicus, with industry allies, in defense of PURPA's modernization.

Please contact [Redacted - PII] **with any questions.**

Migratory Bird Treaty Act

On May 7, 2021, the U.S. Fish and Wildlife Service issued a proposed rule that would rescind the Trump final rule that interpreted the Migratory Bird Treaty Act's ("MBTA") prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. Prior to the May action, the Biden administration issued an extension of the effective date of the Trump rule out to March 8, 2021. The Chamber submitted comments on both the [May 7th](#) and [March](#) notices.

Please contact [Redacted - PII] **with any questions.**

Nationwide Permit Coalition Comments

The Army Corps of Engineers finalized updates to the Nationwide Permit program on January 13, 2021. On January 20, 2021, the Biden administration issued a [regulatory freeze](#) for new and pending rules, including rules published in the *Federal Register* but not yet implemented, to provide the new administration time for review. The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer's [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community's broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation.

A [lawsuit](#) was filed in May 2021 against the Corps by the Center for Biological Diversity, Sierra Club, Friends of the Earth, Waterkeeper Alliance, and Montana Environmental Information Center, stating that the Endangered Species Act requires consultation with relevant agencies to complete a NWP.

Please contact [Redacted - PII] **or Christopher Guith**
[Redacted - PII] **with any questions.**

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy—energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others—to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

-

- 7/13/2021 – Senators Portman and Sinema introduced the “[Federal Permitting Reform and Jobs Act](#),” which would reauthorize Title 41 of the Fixing America's Surface Transportation Act (FAST-41) of 2015 to help improve the efficiency and coordination of federal permitting decisions for critical infrastructure. The Federal Permitting Reform and Jobs Act would help build the economy of the future as well as provide well-paying jobs building more resilient highways and other infrastructure linking neighborhoods to businesses and job centers, and providing better access to clean water and affordable energy. The Chamber issued a letter of support and has added the bill to the Leadership list to reward bipartisan efforts.
- 6/21/2021 – The U.S. District Court for the Western District of Virginia [dismissed the lawsuit](#) by environmental groups challenging a CEQ 2020 rule. The court concluded that the challenge was not ripe. The remaining four lawsuits on the CEQ 2020 rule remain in abeyance.
- 6/29/2021 – [CEQ issues interim final rule](#) moving back by two years the date by which federal agencies are required to propose updates to their NEPA procedures to conform to CEQ's 2020 rule. The interim final rule will allow CEQ more time to revise the 2020 NEPA rule. Over 80 agencies have NEPA procedures on the books, which have not yet been updated to be consistent with the 2020 CEQ rule. The Chamber has circulated an Unlock American Investment coalition comment letter to submit to the docket and will likely submit a set of separate Chamber specific comments on the interim final rule. The comment deadline is July 29th.

Please contact Redacted - PII **with any questions.**

Risk Management Plan (RMP) Reconsideration

On June 16th and July 8, 2021, EPA held public listening sessions to give interested parties the opportunity to present information and provide comment on views pertaining to the revisions made to the RMP rule since 2017. The [Chamber gave testimony](#) at the EPA public hearing held on July 8, 2021, supporting the smart regulations that recognize industry progress, promoting coordination with OSHA, and cautioning against the security risks of requiring the public disclosure of too much information. Section 112(r) of the Clean Air Act Amendments requires EPA to publish regulations and guidance for chemical accident prevention at facilities that use certain hazardous substances. These regulations were updated in 2017 and then in 2019. In the 2019 rule, EPA concluded that a better approach is to improve the performance of a subset of facilities by achieving greater compliance with RMP regulations instead of imposing additional regulatory requirements on the larger population of facilities that is generally performing well in preventing accidental releases. For this and other reasons, EPA rescinded some of the 2017 amendments that were unreasonable or not practicable relating to safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor regulatory changes. In January of this year, the Biden Administration identified the RMP rule as an action for review under Executive Order 13990: Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.

Please contact Redacted - PII *with any questions*

Light-duty Vehicle Standards

The years-long negotiations between the Federal government, California, and automakers over fuel economy and greenhouse gas (GHG) standards is expected to continue in the Biden Administration. Since 2019, the Chamber has become more active in engaging in these issues, actively lobbying for middle-ground solutions that deliver steady fuel economy gains, preserve a single national market for auto sales and unite stakeholders.

In 2020, the Trump Administration finalized rules known as “SAFE 1” (rescinding California’s special Clean Air Act waiver to set standards more stringent than the federal government) and “SAFE 2” (revised passenger vehicle fuel economy standards for model years 2021-2026). The Biden Administration has committed to reconsidering both rules. In April, it [proposed](#) to repeal the prior waiver rescension, and an EPA-DOT proposal revising GHG and fuel economy standards is expected sometime in July. The Chamber intends to remain engaged on this issue and seek a middle-ground solutions that are acceptable to its broad membership.

Please contact Redacted - PII *with any questions.*

Affordable Clean Energy Rule Litigation

In June 2019, the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration’s Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA’s CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber’s [brief](#), submitted primarily in defense of the EPA’s repeal of the CPP, was submitted on July 16, 2020. On October 8, 2020, the Court held oral argument on the merits of the EPA’s repeal of the CPP and its promulgation of the ACE Rule.

On January 19, 2021, the U.S. Court of Appeals for the D.C. Circuit issued a 2-1 [opinion](#) vacating the Trump EPA’s rules rescinding the CPP and replacing it with the ACE Rule. The majority opinion held that the Clean Air Act does not constrain EPA to “inside the fence” mechanisms to achieve greenhouse gas emissions reductions. The order further rejected the replacement ACE Rule as representing an overly constrained view of the agency’s authority. The Court remanded the rulemaking to EPA for the agency to reassess its power plant greenhouse gas regulations. Judges Millett and Pillard (both Obama appointees) supported the full opinion, while Judge Walker (a Trump appointee) wrote a statement concurring in part and dissenting in part.

On February 22, 2021, the D.C. Circuit granted EPA’s unopposed motion for a partial stay of issuance of the mandate and requested status reports from EPA at 90-day intervals. On April 29, 2021, a group of states led by West Virginia filed with the U.S. Supreme Court a petition for cert. of the D.C. Circuit’s ACE Rule decision. The North American Coal Corporation filed its own

petition for cert. similarly challenging the D.C. Circuit's disposition of the ACE Rule. The Chamber is monitoring these developments.

Please contact Redacted - PII ***with any questions.***

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hard rock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings via a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. The Administration did not include this final rule in its non-exhaustive listing of EPA actions to review as part of President Biden’s [Executive Order](#) on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.

Please contact Redacted - PII **with any questions.**

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On remand, the Federal District Court in Hawaii issued a July 15, 2021 decision holding that the Hawaiian island of Maui must obtain a Clean Water Act permit for discharges of wastewater that find their way into the ocean, concluding that the injection into underground wells that the county knows will reach the ocean amounts to the equivalency test established by the Supreme Court.

On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in

that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020.

Separately, EPA proposed in December 2020 a guidance document that identifies one additional factor for consideration when evaluating whether and how to perform a “functional equivalent” analysis; specifically the “design and performance of the system or facility from which the pollutant is released.” EPA finalized this [guidance](#) on January 14, 2021. While a guidance document such as this does not have the force and effect of law, it is anticipated that the Biden EPA will reevaluate this approach to the “functional equivalent” analysis.

Please contact Redacted - PII **with any questions.**

HFC Phasedown Legislation

There are two issues on our agenda following-up on the enactment of the American Innovation and Manufacturing (AIM) Act: 1) President Biden’s January 27, 2021 executive order on climate priorities directed the Secretary of State to prepare a package within 60 days to send the Kigali amendment to the Senate for ratification. The Chamber is re-engaging a coalition of our member trade associations to support ratification. 2) EPA has 270 days to promulgate several rules, including allocations to implement the AIM Act. The Chamber filed coalition comments to provide p key principles for implementation and ensure the business community’s priorities are included in the final regulation. We are convening a discussion with EPA regarding next steps scheduled for July 20, 2021.

Please contact Redacted - PII **with any questions.**

Marine Debris and Recycling

The Chamber is joining the American Chemistry Council, the National Association of Manufacturers, and other members and trades to develop Save Our Seas 3.0 and other recycling infrastructure and marine debris priorities. More information is expected by the fall of 2021.

Canada is moving forward with declaring plastics as toxic under Schedule 1 of the Canadian Environmental Protection Act (CEPA) -- to add plastics to the Toxic Substances List. The Chamber has been working with ACC and NAM to urge that the U.S. Trade Representative raise concerns about this issue during USMCA trilateral discussion.

Please contact Redacted - PII **with any questions.**

Ozone and Particulate Matter NAAQS Review

On June 17, 2021, EPA announced selections for membership to the Clean Air Scientific Advisory Committee (CASAC) and simultaneously called for nominations for a supplemental CASAC panel on particulate matter (PM). Nominations for the PM panel were due 7/16/2021.

On June 10th, EPA [announced](#) its plans to reconsider the 2020 PM2.5 NAAQS decision that retained the existing ambient standards. EPA expects to issue a proposed rulemaking in Summer 2022 and a final rule in Spring 2023. Reconsideration of the Ozone NAAQS remains

under deliberation. EPA issued their final actions in December 2020 to retain the current NAAQS standards for both ozone and PM, designating both actions effective immediately. EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM_{2.5} NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m³ to 12 ug/m³. The Ozone standards were last tightened in 2015, when the agency lowered the ambient standards from 75 to 70 parts per million. In response to lawsuits challenging the standards, the Chamber along with other trades have intervened to support their retention.

Please contact Redacted - PII **with any questions.**

PFAS

The Chamber and our coalition of companies and trades sent our policy principles focusing on sound science, risk-based regulations, including finalizing the national Maximum Contaminant Level for PFOA and PFOS under the Safe Drinking Water Act to Administrator Regan on March 11, 2021.

- The coalition provided comments in response to EPA's interim guidance and PFAS waste disposal and destruction. The guidance was prepared in response to an amendment to the FY2020 National Defense Authorization Act that requires development and update every three years. EPA also issued an unregulated contaminant water monitoring rule, which includes 29 PFAS and also reissued the proposed regulatory determination on PFOA and PFOS. The Chamber is considering whether and how to provide comments.
- The Senate passed **S. 914, the Drinking Water and Wastewater Infrastructure Act** by a vote of 89-2 on April 29th, which included an amendment agreed to by voice vote by Sen. Shaheen expanding eligibility under the State response to emerging contaminants program.
- The Chamber provided a letter of support for **H.R. 1915, the Water Quality and Job Creation Act of 2021**. The legislation contains \$1 B in funding over five years for treatment of emerging contaminants including PFAS.
- The Canadian Departments of Environment and Health have indicated that they will move forward to [address PFAS as a broad class](#). I am working with our colleagues at the Canadian Chamber to engage directly with the departments and am proposing that we send our principles along with a separate cover.
- On April 27th, EPA Administrator Regan created a [PFAS Council](#) to convene leaders and experts across the agency to provide recommendations within 100 days on a path forward.
- There are several states, including CT, IL, and ME that are moving forward with legislation to ban specific PFAS or destruction processes.
- The House intends to consider H.R. 2467, the PFAS Action Act, the week of July 19th. The Chamber will continue its advocacy in opposition to this legislation, communicating concerns with the bill's designation of PFAS substances as hazardous under Superfund/CERCLA, among other problematic provisions.

- Recent infrastructure legislation, H.R. 3684, which passed the House contains broad application of wastewater effluent guidelines impacting select industry sectors consistent with the language in [S. 1907](#). The Chamber is working to oppose these provisions and ensure they are not included in any final bill.

Please contact [Redacted - PII]
[Redacted - PII] **with any questions or to get involved.**

Resilience

The Chamber drafted a [blog](#) of policy suggestions on resilience for collaboration between Congress and the administration. We are also working on convening a workshop between the Council on Infrastructure Financing Authorities and state emergency managers to share experiences on implementing the Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act. These policy suggestions were also included in recent testimony before the House Committee on Transportation and Infrastructure.

The Chamber brought together state emergency managers with state water SRF managers to share best practices and experiences in standing up a new revolving fund program.

We are also engaging the committees of jurisdiction to urge including bipartisan resilience issues in surface transportation legislation. Our resilience coalition sent a letter to the T&I Committee leadership urging that they add bipartisan provisions from the Senate bill ahead of the House T&I mark-up.

Please contact [Redacted - PII] **with any questions.**

TSCA

EPA announced via a press release on June 20, [2021](#) that they will be changing some aspects to how they move forward with TSCA Risk Evaluations by ensuring that environmental justice and fenceline community exposure are considered. EPA will also reexamine some of the completed risk evaluations for the first ten chemicals to determine what exposure pathways may not have been considered before. We are working closely with EPA staff to understand what metrics and screening tools they will engage for this work. EPA has made the request of our members to share examples of fenceline community exposure pathways to help EPA understand the facilities better. If your organization has any of this data (can be anonymous) that you would be comfortable sharing, please let Mary know and we can discuss.

The Chamber continues to be active on regulatory issues related to the Toxic Substances and Control Act (TSCA). In 2020, the Chamber worked with a coalition of trade groups that requested that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. This effort resulted in EPA announcing plans for such a rulemaking in the fall 2020 regulatory agenda. The Chamber is now working with partner trades to formally encourage the Biden Administration to carry on with these risk management

plans. [The Chamber led a coalition letter on March 11, 2021](#) to Administrator Regan conveying the importance of framework rulemaking and encouraging Regan's EPA to lead this work. The letter had 20 signatories and we are working with EPA staff now to coordinate a meeting with the trades who signed on to discuss the letter. Meanwhile, the Administration is considering revisions pertaining to an earlier step in the chemical regulation process—risk evaluation. The Chamber expects to continue to engage on issues related to both risk evaluation and risk management rulemakings and welcomes member input on the issue.

Please contact [Redacted - PII] **with any questions.**

Stormwater Innovation Principles

The Chamber is providing comments to the House Committee on Transportation and Infrastructure on the reauthorization of the Clean Water State Revolving Funds including grant programs on stormwater reuse issues. We are hosting a discussion with EPA and our coalition regarding the potential for more flexible, offsite compliance measures slated for the week of July 26, 2021.

Please contact [Redacted - PII] **with any questions.**

Water Infrastructure and Policy Priorities

The House passed H.R. 3684, the INVEST in America Act, on July 1, 2021 by a vote of 221 to 201 mostly along party lines. The legislation included the provisions of H.R. 1915, the [Water Quality and Job Creation Act of 2021](#), which contained \$40 billion over five years for the Clean Water SRF and a provision providing \$200 M per year over four years in grants to wastewater systems to treat PFAS and other emerging contaminants. The Chamber endorsed this legislation. There were also language in the bill for which the Chamber has concerns and will work to remove from any final package. The Chamber added Senate S. 914, the Drinking Water and Wastewater Infrastructure Act to our Congressional scorecard as the Senate passed the bill by a vote of 89 to 2. Committee on Environment and Public Works Democrats and Republicans are close to reaching a bipartisan agreement on a water infrastructure approach. We also recently endorsed the Low-Income Water Customer Assistance Program Act to establish a program for affordable drinking water to low-income families. Here are our [2021 water policy priorities](#) for your consideration.

Please contact [Redacted - PII] **with any questions.**

Waters of the United States

The U.S. Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined "Waters of the United States" ("WOTUS") under the Clean Water Act ("CWA") and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies' efforts at the rule's signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on

April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. On June 9, 2021, the EPA and the Department of the Army announced their intent to revise the definition of WOTUS, stating that such revised definition will better protect our nation's water resources. Concurrently, the Department of Justice filed a motion to remand pending litigation on WOTUS. Finally, in her confirmation testimony as Assistant Administrator for Water, Radhika Fox indicated interest in a regional listening tour to get input on whether and how to revisit the rule.

Please contact [Redacted - PII] **with any questions.**

EPA Cost-Benefit Analysis

On December 9, 2020, EPA finalized a rule that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, the Chamber has been extensively engaged in supporting this rulemaking and emphasizing the importance of transparency and consistency in developing the agency's cost-benefit analyses for rulemakings. Earlier in this process, the Chamber issued a statement, presented [testimony](#) at the agency's public hearing on the rule, launched an advocacy [webpage](#), and submitted [coalition comments](#) in conjunction with several other trades.

On May 13th, EPA [proposed](#) an interim final rule rescinding the 2020 BCA rulemaking. The Chamber filed comments in opposition to this decision [individually](#) and as [part of a coalition](#).

Please contact [Redacted - PII]
[Redacted - PII] **with any questions.**

Please contact [Redacted - PII] **with any questions.**

Chemistry Solutions Working Group

The Chamber has launched a Chemistry Solutions Working Group to convene all aspects of the chemical supply chain and we welcome you to join us. This group is open to all across the Chamber membership and are working to be proactive on issues facing the chemical industry and the entire supply chain.

- We are going to begin convening a subgroup of this committee to discuss ongoing ethylene oxide issues. If you'd like to join this, please let Mary know.
- We have pulled together a [regulatory calendar](#) for our members to reference of upcoming regulations in 2021 in this space. Please let us know which of these are a priority for your organization so we can work together on them.
- The Chemistry Solutions Working Group just recently hosted a series of meetings with EPA staff on the topics of Environmental Justice, Occupational Hazards and PPE, and TSCA Risk Management. We look forward to continuing to engage with EPA on these topics and more.

Please contact Redacted - PII ***with any questions.***

**Energy and Environment Committees
Read-Ahead Materials**

August 18, 2021



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Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Nationally Determined Contribution and COP 26

On April 22nd, President Biden announced a revised U.S. National Determined Contribution (NDC) commitment as he opened the virtual Climate Leader's Summit. The pledge calls for reducing net economy-wide greenhouse gas emissions 50-52% below 2005 levels by 2030. In response, the Chamber issued a [statement](#) emphasizing that achieving the goal "will require new technology and new policy that is durable and has the support of bipartisan members of congress, consumers, business, and other stakeholders."

In March 15th, the Chamber submitted to the White House a set of [principles and priorities](#) aimed at informing the Biden Administration's effort to develop a revised Nationally Determined Contribution for submission under the Paris Climate Agreement. The document details eight high-level business community priorities for incorporation into the NDC. We are calling for reducing emissions as low as we can, as fast as we can, at the pace of innovation, while ensuring that any national targets and timetables are realistic, achievable, appropriately account for U.S. economic interests, and work to address impacts to trade-exposed, hard-to-adapt, and energy-intensive sectors.

The Chamber is also closely engaged in activities leading up to the UN Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP 26) meeting this November in Glasgow, Scotland. Related to this, on July 15, the European Commission released its "Fit for 55" policy package, which includes details of a Carbon Border Adjustment Mechanism that has potentially significant implications for U.S. businesses. The Chamber issued a [statement](#) in response to the proposal and will be monitoring its developments over the coming months.

Please contact Redacted - PII ***with any questions.***

Latest OMB Regulatory Agenda

On June 11, 2021, agencies released their 2021 Spring Regulatory Agendas outlining their plans for regulatory actions that they plan to take over the next year. Many of the rulemakings outlined in the agency's individual Spring agendas include actions to rescind or revise Trump Administration rulemakings. As part of President Biden's Climate Science order, he directed agencies to review every rulemaking issued in the prior administration, but separately identified a list of 104 Trump rules as their top priorities for review. Below is a brief overview of a few agency's agendas:

- EPA's [agenda](#) includes almost 130 actions with 67 from the office of air, 29 from the office of chemical safety, and 15 from the office of water. A few noteworthy rules include proposed rules for [ethylene oxide](#), section 126 petitions for [MD](#) and [NY](#), [light duty GHG standards](#), [MATS v3](#), oil and gas methane standards for [new](#) and [existing](#) sources, multiple TSCA section 6 rules, and CWA section [401](#) and [404](#) rulemakings.

Announcements were also recently made on revising the PM NAAQS standards, WOTUS, RMP, and other rules.

- [DOI's agenda](#) includes almost 260 actions with the majority being related to endangered species act designations for individual species. Notable rulemakings include revisions to the [waste prevention](#), [fossil fuel leasing processes](#), [pipeline ROWs](#), [blowout preventers](#), ESA [lesser prairie chicken designation](#), [migratory bird](#) and [eagle](#) incidental take rules.
- [DOE's agenda](#) includes over 120 actions with the majority related to energy efficiency standards for appliances and commercial equipment. A few notable rulemakings include electric transmission at international boundaries, procedures for the export of electricity, energy efficiency standards for furnaces, hot water heaters, and other natural gas appliances.
- CEQ's agenda includes just five rulemakings including a NEPA GHG guidance, implementing regulations [phase 1](#) and [phase 2](#) updates, and [deadline rule for updates to the 2020 rule](#).
- [DOC's agenda](#) includes over 170 rulemakings with most coming out of the National Oceanic and Atmospheric Administration. A few notable rulemakings include ESA designating critical habitat [revisions and definition of habitat](#).

Please contact Redacted - PII **with any questions.**

Updating the Social Cost of Carbon

On May 7, 2021, the Office of Management and Budget (OMB) issued a notice requesting comment on the February interim update to the social costs of carbon, methane, and nitrous oxide (SC-GHG). The OMB notice requests comment on several topics including the best approach to implement the National Academy of Sciences recommendations; to account for climate risk, environmental justice, and intergenerational equity; the appropriate discount rate to account for intergenerational equity; the areas where to apply the SC-GHG including in decision-making, budgeting, and procurement.

The President reinstituted the interagency working group in the Climate Science order and directed them to issue an update to the SC-GHG, first with interim values, followed by final figures no later than January 2022. The February update restores Obama-era valuation estimates, includes \$51 per metric ton of carbon dioxide at a 3% discount rate.

Meanwhile, the Chamber pulled together a coalition of 23 trades that submitted joint comments on the OMB notice [calling for a robust public engagement process](#) as the IWG considers longer-term revisions.

Please contact Redacted - PII
Redacted - PII **with any questions.**

Federal Lands Leasing Ban

On June 15, 2021, Judge Terry Doughty of the Western District of Louisiana issued a preliminary injunction ordering new oil and gas leasing to restart on federal lands and waters nationwide,

holding that plaintiffs had shown a likelihood of success on the merits on their claim that DOI's leasing pause violated the Mineral Leasing Act (MLA) and Outer Continental Shelf Lands Act (OCSLA). On January 27th, 2020, President Biden issued [Executive Order 14008](#), which among other things, indefinitely bans new oil and natural gas leasing on federal lands and waters. This action followed on the January 20th, [Secretarial Order](#) revoking normal delegation of authority for 60 days to Interior's bureaus of the authority to issue new leases, lease amendments, permits, etc. During this indefinite ban, the EO directs Interior to reassess the fossil fuel leasing programs as well as the respective royalty processes. On June 1st, Interior Secretary Deb Haaland [suspended leases](#) in the Alaska National Wildlife Refuge (ANWR), citing a need for further environmental reviews.

Federal lands and waters make up 22% of total us oil production and 12% total natural gas production. The ban created significant uncertainty for operators and curtailed investment in future exploration and production. We partnered with our Federation members to aggressively explain how these policies are nearsighted and counterproductive to growing the economy and reducing greenhouse gas emissions.

Please contact Christopher Guith [Redacted - PII] with any questions.

Endangered Species Act Reform

On June 4, 2021, DOI announced it would be revising several of the Trump administration rules pertaining to the Endangered Species Act, announcing its plans to:

- Rescind the [December 17, 2020, regulations](#) that revised the FWS process for considering exclusions from critical habitat designations under section 4(b)(2) and propose to revert back to the joint 2016 FWS/NMFS regulations at 50 CFR 424.19.
- Rescind the regulatory definition of habitat for the purposes of critical habitat designation ([85 FR 81411; December 16, 2020](#)). FWS stated a regulatory definition is not required to designate critical habitat in compliance with a 2018 SCOTUS decision.
- Revise regulations (84 FR 45020; August 27, 2019) for listing species and designating critical habitat to reinstate prior language affirming that listing determinations are made "without reference to possible economic or other impacts of such determination."
- Revise regulations for interagency cooperation ([84 FR 44976; August 27, 2019](#)) governing section 7 consultation and "effects of the action."
- Reinstatement the "blanket 4(d) rule," which was withdrawn by the previous Administration ([84 FR 44753; August 27, 2019](#)) and establish the default of automatically extending protections provided to endangered species to those listed as threatened, unless the FWS adopts a species-specific 4(d) rule.

Please contact [Redacted - PII] with any questions.

Electric Sector Supply Chain Activities

On January 20, 2021, one of President Biden's first [executive orders](#) (EOs) suspended for ninety (90) days the effectiveness of the Trump Administration's May 1, 2020, [executive order](#) which sought to limit the suppliers of electric grid equipment and prohibit the purchase and use of

such equipment from countries deemed adversarial to domestic grid security (the “BPS EO”). Following this suspension, we received direct confirmation from the Department of Energy (DOE) that the suspension also applied to the [Prohibition Order](#) that DOE issued on December 17, 2020. The Prohibition Order sought to specifically ban numerous categories of equipment, firmware, and software at or within bulk power system facilities that serve or support critical defense facilities. However, subsequent FAQ guidance from DOE, as well as inquiries from supply chain customers, made unclear the applicability and enforceability of the Prohibition Order. In the wake of this confusion, and amongst less formal outreach, the Chamber on March 1, 2021, submitted a [letter](#) to Secretary of Energy Granholm and key White House officials requesting that DOE undertake meaningful outreach with bulk power system supply chain stakeholders before DOE determines its next steps. This letter leveraged some of the points we previously filed with DOE in [comments](#) responsive to the Request for Information DOE issued in response to the BPS EO.

On April 20, 2021, DOE [announced](#) its “100-Day Sprint” on bulk power system cybersecurity. This effort is focused on encouraging grid owners and operators to implement measures or technology (including Neighborhood Keeper) that enhances the detection, mitigation, and forensic capabilities on their systems. Accompanying this initiative, DOE issued a [revocation](#) of the December Prohibition Order, and also issued a [new Request for Information](#) (the “2021 RFI”) seeking additional stakeholder input in advance of additional activities by DOE directed at securing the bulk power system supply chain. The Chamber has held multiple conversations with high-level DOE personnel in the wake of these actions, and worked extensively with its Bulk Power System Supply Chain Working Group to develop responsive [comments](#) to DOE’s 2021 RFI that were submitted on June 7, 2021. The Chamber is also collaborating with the Edison Electric Institute and the North American Transmission Forum on the development of a single repository or library to streamline the analysis and implementation of potential future supply chain restrictions.

On a separate track, the Federal Energy Regulatory Commission (FERC) on September 17, 2020, issued its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its members, the Chamber submitted [comments](#) responsive to FERC’s NOI on November 23, 2020. Further action by FERC responsive to the NOI is anticipated.

Please contact Redacted - PII **with any questions.**

Executive Order on America’s Supply Chains

On February 24, 2021, President Biden issued [Executive Order 14017](#), “America’s Supply Chains.” This executive order directs an immediate 100-day review across federal agencies to address vulnerabilities in the supply chains of four key product areas: pharmaceuticals and active pharmaceutical agreements; critical minerals, including rare earths; semiconductors and advanced packaging; and large capacity batteries, such as those used in electric vehicles. In addition, the order calls for a more in-depth one-year review of a broader set of U.S. supply chain sectors focusing on: the energy sector industrial base; the information and

communications technology (ICT) industrial base; the transportation industrial base; the defense industrial base; the public health and biological preparedness industrial base; and the supply chains for agricultural commodities and food production. The Chamber has established a cross-sectoral internal working group to coordinate the Chamber's collection of information and analysis, as well as to formulate the Chamber's advocacy, regarding this far-reaching executive order. On April 14, 2021, the Chamber submitted [comments](#) responsive to the Department of Energy's March 23, 2021, [Request for Information](#) regarding risks in the high-capacity battery supply chain, including as it relates to batteries for electric vehicles, data centers and telecommunications, and consumer devices. On April 28, 2021, the Chamber provided [comments](#) in response to the U.S. Department of Defense's [request for input](#) regarding risks in the supply chain for strategic and critical materials, and also joined [comments](#) submitted by the Council of Defense and Space Industry Associations addressing the same topic.

On June 8, 2021, the Administration issued a report entitled "[Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth](#)" that concludes the 100-day review. A [fact sheet](#) was also released. The report proposes a significant number of actions as part of a "whole of government" approach to strengthen the resilience of the supply chains for these four industries, including interagency task forces, new trade actions, and legislation that would support increased domestic production, invest in new production and processing of critical minerals, combat unfair trade practices, and strengthen reliance on key U.S. allies. This report was accompanied by a DOE-led National Blueprint for Lithium Batteries that details a number of specific steps the Administration plans to take to address concerns regarding sourcing and manufacturing related to electric vehicles. The Chamber is reviewing the recommendations in these reports and welcomes member input as we move forward.

Please contact Redacted - PII
Redacted - PII **with any questions.**

Energy Innovation Legislation

In late December, the Energy Act of 2020 was included in omnibus appropriations legislation that was signed into law just before adjournment of the 116th Congress. Passage of the legislation completed work on one of the Chamber's top legislative priorities in 2020. The Chamber worked closely with members of Congress and key committee staff on both sides of the aisle to craft and mobilize support for the bill and the dozens of individual pieces of legislation that were included in it. In response, Marty Durbin issued a [statement](#) noting that successful passage of the Energy Act proves "there is common ground on which all sides of the debate can come together to begin to address climate change, promote American technological leadership, and foster continued economic growth." As significant infrastructure legislation takes form, the Chamber is working to ensure the individual programs and activities authorized by the Energy Act are fully funded through the related budgeting and appropriations process.

Most recently, on July 16, the House Appropriations Committee passed the Energy and Water Appropriations legislation for fiscal year 2022 and included strong funding levels for most key

Energy Act of 2020 programs. Concurrently, Senate Energy and Natural Resources has also passed the bipartisan Energy Infrastructure Act, which aims to build upon a number of energy innovation issues that are also a priority of the Chamber.

Please contact [Redacted - PII]
[Redacted - PII] *with questions.*

EPA MATS Rule

On April 16, 2020, the EPA issued its [final rule](#) modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA's proposal to eliminate the "appropriate and necessary" finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the "appropriate and necessary" finding, while retaining the compliance obligations therein. On January 20, 2021, an early Biden Administration [Executive Order](#) committed to review a significant number of EPA rules and regulations, including the MATS final rule published on May 22, 2020. While lawsuits are also pending on this rule, we anticipate that the Biden Administration's review of this rule could moot some of that litigation through the reinstatement of the "appropriate and necessary" finding noted above. However, EPA has recently signaled that its forthcoming revisions to this final rule could provide challenges for the remaining coal fleet through a reassessment of the accompanying Residual Risk and Technology Review.

Please contact [Redacted - PII] *with any questions.*

FERC Transmission Reform Rulemaking

At its July 15, 2021 open meeting, the Federal Energy Regulatory Commission (FERC) initiated a rulemaking proceeding to reconsider the Commission's transmission planning, associated cost allocation, and generator interconnection processes. This monumental undertaking was launched with the issuance of an advance notice of proposed rulemaking (ANOPR) entitled ["Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection."](#) Among other things, the ANOPR asks how transmission planning should consider future scenarios, whether transmission providers should establish a process to identify geographic zones that have the potential for the development of large amounts of renewable generation, whether reforms are needed to improve the coordination between the regional transmission planning and cost allocation and generator interconnection processes; how to appropriately identify and allocate the costs of new transmission facilities, and whether participant funding of interconnection-related network upgrades may be proven to be unjust and unreasonable. The ANOPR also seeks comment regarding whether the current approach to oversight of transmission investment adequately protects customers. Comments responsive to the ANOPR will be due 75 after its publication in the Federal Register. The

Chamber welcomes input from its members on whether it should submit comments in this proceeding and as to the content of such potential comments.

Please contact Redacted - PII *with any questions.*

FERC Pipeline Certification Regulations

On April 19, 2018, FERC issued a [Notice of Inquiry](#) (NOI) initiating a review of its 1999 interstate natural gas Certificate Policy Statement, which the Commission utilizes to guide its evaluation of natural gas pipeline infrastructure projects. The Global Energy Institute submitted [comments](#) responsive to this NOI on July 25, 2018. On February 18, 2021, FERC issued a [revised NOI](#) in the same docket (PL18-1-000), reiterating a number of the questions posed in 2018 while adding a number of new and revised questions and an additional broad area of inquiry, which is focused on FERC's consideration of the effects of its pipeline certification process on environmental justice communities. FERC's aim with the issuance is to "refresh the record and provide updated information and additional viewpoints to help the Commission assess its policy." On May 26, 2021, the Chamber submitted [comments](#) responsive to this revised NOI. Commission action responsive to the submitted comments is anticipated later this year.

Please contact Redacted - PII *with any questions.*

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the "one-mile rule" used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities' access to wholesale markets, among other things. Concurrent with FERC's finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC's final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020.

A number of lawsuits challenging FERC's final rule on PURPA were filed and consolidated in the 9th Circuit Court of Appeals. On May 27, 2021, Petitioner Solar Energy Industry Association and Petitioner Montana Environmental Information Center, et al., submitted their opening briefs. Pursuant to a modified briefing schedule issued by the court on June 23, 2021, Intervenorors and amici curiae supporting the Petitioners now have their briefs due on July 23, 2021. FERC's respondent brief will now be due on October 21, 2021, and respondent-intervenor briefs and amicus briefs in support of FERC's PURPA final rule will be due on November 22, 2021. The

Chamber anticipates playing a role as an amicus, with industry allies, in defense of PURPA's modernization.

Please contact [Redacted - PII] **with any questions.**

Migratory Bird Treaty Act

On May 7, 2021, the U.S. Fish and Wildlife Service issued a proposed rule that would rescind the Trump final rule that interpreted the Migratory Bird Treaty Act's ("MBTA") prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. Prior to the May action, the Biden administration issued an extension of the effective date of the Trump rule out to March 8, 2021. The Chamber submitted comments on both the [May 7th](#) and [March](#) notices.

Please contact [Redacted - PII] **with any questions.**

Nationwide Permit Coalition Comments

The Army Corps of Engineers finalized updates to the Nationwide Permit program on January 13, 2021. On January 20, 2021, the Biden administration issued a [regulatory freeze](#) for new and pending rules, including rules published in the *Federal Register* but not yet implemented, to provide the new administration time for review. The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer's [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community's broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation.

A [lawsuit](#) was filed in May 2021 against the Corps by the Center for Biological Diversity, Sierra Club, Friends of the Earth, Waterkeeper Alliance, and Montana Environmental Information Center, stating that the Endangered Species Act requires consultation with relevant agencies to complete a NWP.

Please contact [Redacted - PII] **or Christopher Guith**
[Redacted - PII] **with any questions.**

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy—energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others—to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

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- 7/13/2021 – Senators Portman and Sinema introduced the “[Federal Permitting Reform and Jobs Act](#),” which would reauthorize Title 41 of the Fixing America's Surface Transportation Act (FAST-41) of 2015 to help improve the efficiency and coordination of federal permitting decisions for critical infrastructure. The Federal Permitting Reform and Jobs Act would help build the economy of the future as well as provide well-paying jobs building more resilient highways and other infrastructure linking neighborhoods to businesses and job centers, and providing better access to clean water and affordable energy. The Chamber issued a letter of support and has added the bill to the Leadership list to reward bipartisan efforts.
- 6/21/2021 – The U.S. District Court for the Western District of Virginia [dismissed the lawsuit](#) by environmental groups challenging a CEQ 2020 rule. The court concluded that the challenge was not ripe. The remaining four lawsuits on the CEQ 2020 rule remain in abeyance.
- 6/29/2021 – [CEQ issues interim final rule](#) moving back by two years the date by which federal agencies are required to propose updates to their NEPA procedures to conform to CEQ’s 2020 rule. The interim final rule will allow CEQ more time to revise the 2020 NEPA rule. Over 80 agencies have NEPA procedures on the books, which have not yet been updated to be consistent with the 2020 CEQ rule. The Chamber has circulated an Unlock American Investment coalition comment letter to submit to the docket and will likely submit a set of separate Chamber specific comments on the interim final rule. The comment deadline is July 29th.

Please contact Redacted - PII *with any questions.*

Risk Management Plan (RMP) Reconsideration

On June 16th and July 8, 2021, EPA held public listening sessions to give interested parties the opportunity to present information and provide comment on views pertaining to the revisions made to the RMP rule since 2017. The [Chamber gave testimony](#) at the EPA public hearing held on July 8, 2021, supporting the smart regulations that recognize industry progress, promoting coordination with OSHA, and cautioning against the security risks of requiring the public disclosure of too much information. Section 112(r) of the Clean Air Act Amendments requires EPA to publish regulations and guidance for chemical accident prevention at facilities that use certain hazardous substances. These regulations were updated in 2017 and then in 2019. In the 2019 rule, EPA concluded that a better approach is to improve the performance of a subset of facilities by achieving greater compliance with RMP regulations instead of imposing additional regulatory requirements on the larger population of facilities that is generally performing well in preventing accidental releases. For this and other reasons, EPA rescinded some of the 2017 amendments that were unreasonable or not practicable relating to safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor regulatory changes. In January of this year, the Biden Administration identified the RMP rule as an action for review under Executive Order 13990: Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.

Please contact Redacted - PII with any questions

Light-duty Vehicle Standards

The years-long negotiations between the Federal government, California, and automakers over fuel economy and greenhouse gas (GHG) standards is expected to continue in the Biden Administration. Since 2019, the Chamber has become more active in engaging in these issues, actively lobbying for middle-ground solutions that deliver steady fuel economy gains, preserve a single national market for auto sales and unite stakeholders.

In 2020, the Trump Administration finalized rules known as “SAFE 1” (rescinding California’s special Clean Air Act waiver to set standards more stringent than the federal government) and “SAFE 2” (revised passenger vehicle fuel economy standards for model years 2021-2026). The Biden Administration has committed to reconsidering both rules. In April, it [proposed](#) to repeal the prior waiver rescension, and an EPA-DOT proposal revising GHG and fuel economy standards is expected sometime in July. The Chamber intends to remain engaged on this issue and seek a middle-ground solutions that are acceptable to its broad membership.

Please contact Redacted - PII with any questions.

Affordable Clean Energy Rule Litigation

In June 2019, the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration’s Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA’s CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber’s [brief](#), submitted primarily in defense of the EPA’s repeal of the CPP, was submitted on July 16, 2020. On October 8, 2020, the Court held oral argument on the merits of the EPA’s repeal of the CPP and its promulgation of the ACE Rule.

On January 19, 2021, the U.S. Court of Appeals for the D.C. Circuit issued a 2-1 [opinion](#) vacating the Trump EPA’s rules rescinding the CPP and replacing it with the ACE Rule. The majority opinion held that the Clean Air Act does not constrain EPA to “inside the fence” mechanisms to achieve greenhouse gas emissions reductions. The order further rejected the replacement ACE Rule as representing an overly constrained view of the agency’s authority. The Court remanded the rulemaking to EPA for the agency to reassess its power plant greenhouse gas regulations. Judges Millett and Pillard (both Obama appointees) supported the full opinion, while Judge Walker (a Trump appointee) wrote a statement concurring in part and dissenting in part.

On February 22, 2021, the D.C. Circuit granted EPA’s unopposed motion for a partial stay of issuance of the mandate and requested status reports from EPA at 90-day intervals. On April 29, 2021, a group of states led by West Virginia filed with the U.S. Supreme Court a petition for cert. of the D.C. Circuit’s ACE Rule decision. The North American Coal Corporation filed its own

petition for cert. similarly challenging the D.C. Circuit's disposition of the ACE Rule. The Chamber is monitoring these developments.

Please contact Redacted - PII ***with any questions.***

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hard rock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings via a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. The Administration did not include this final rule in its non-exhaustive listing of EPA actions to review as part of President Biden’s [Executive Order](#) on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.

Please contact Redacted - PII **with any questions.**

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On remand, the Federal District Court in Hawaii issued a July 15, 2021 decision holding that the Hawaiian island of Maui must obtain a Clean Water Act permit for discharges of wastewater that find their way into the ocean, concluding that the injection into underground wells that the county knows will reach the ocean amounts to the equivalency test established by the Supreme Court.

On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in

that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020.

Separately, EPA proposed in December 2020 a guidance document that identifies one additional factor for consideration when evaluating whether and how to perform a “functional equivalent” analysis; specifically the “design and performance of the system or facility from which the pollutant is released.” EPA finalized this [guidance](#) on January 14, 2021. While a guidance document such as this does not have the force and effect of law, it is anticipated that the Biden EPA will reevaluate this approach to the “functional equivalent” analysis.

Please contact [Redacted - PII] **with any questions.**

HFC Phasedown Legislation

There are two issues on our agenda following-up on the enactment of the American Innovation and Manufacturing (AIM) Act: 1) President Biden’s January 27, 2021 executive order on climate priorities directed the Secretary of State to prepare a package within 60 days to send the Kigali amendment to the Senate for ratification. The Chamber is re-engaging a coalition of our member trade associations to support ratification. 2) EPA has 270 days to promulgate several rules, including allocations to implement the AIM Act. The Chamber filed coalition comments to provide p key principles for implementation and ensure the business community’s priorities are included in the final regulation. We are convening a discussion with EPA regarding next steps scheduled for July 20, 2021.

Please contact [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Chamber is joining the American Chemistry Council, the National Association of Manufacturers, and other members and trades to develop Save Our Seas 3.0 and other recycling infrastructure and marine debris priorities. More information is expected by the fall of 2021.

Canada is moving forward with declaring plastics as toxic under Schedule 1 of the Canadian Environmental Protection Act (CEPA) -- to add plastics to the Toxic Substances List. The Chamber has been working with ACC and NAM to urge that the U.S. Trade Representative raise concerns about this issue during USMCA trilateral discussion.

Please contact [Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

On June 17, 2021, EPA announced selections for membership to the Clean Air Scientific Advisory Committee (CASAC) and simultaneously called for nominations for a supplemental CASAC panel on particulate matter (PM). Nominations for the PM panel were due 7/16/2021.

On June 10th, EPA [announced](#) its plans to reconsider the 2020 PM2.5 NAAQS decision that retained the existing ambient standards. EPA expects to issue a proposed rulemaking in Summer 2022 and a final rule in Spring 2023. Reconsideration of the Ozone NAAQS remains

under deliberation. EPA issued their final actions in December 2020 to retain the current NAAQS standards for both ozone and PM, designating both actions effective immediately. EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM_{2.5} NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m³ to 12 ug/m³. The Ozone standards were last tightened in 2015, when the agency lowered the ambient standards from 75 to 70 parts per million. In response to lawsuits challenging the standards, the Chamber along with other trades have intervened to support their retention.

Please contact [Redacted - PII] with any questions.

PFAS

The Chamber and our coalition of companies and trades sent our policy principles focusing on sound science, risk-based regulations, including finalizing the national Maximum Contaminant Level for PFOA and PFOS under the Safe Drinking Water Act to Administrator Regan on March 11, 2021.

- The coalition provided comments in response to EPA's interim guidance and PFAS waste disposal and destruction. The guidance was prepared in response to an amendment to the FY2020 National Defense Authorization Act that requires development and update every three years. EPA also issued an unregulated contaminant water monitoring rule, which includes 29 PFAS and also reissued the proposed regulatory determination on PFOA and PFOS. The Chamber is considering whether and how to provide comments.
- The Senate passed **S. 914, the Drinking Water and Wastewater Infrastructure Act** by a vote of 89-2 on April 29th, which included an amendment agreed to by voice vote by Sen. Shaheen expanding eligibility under the State response to emerging contaminants program.
- The Chamber provided a letter of support for **H.R. 1915, the Water Quality and Job Creation Act of 2021**. The legislation contains \$1 B in funding over five years for treatment of emerging contaminants including PFAS.
- The Canadian Departments of Environment and Health have indicated that they will move forward to [address PFAS as a broad class](#). I am working with our colleagues at the Canadian Chamber to engage directly with the departments and am proposing that we send our principles along with a separate cover.
- On April 27th, EPA Administrator Regan created a [PFAS Council](#) to convene leaders and experts across the agency to provide recommendations within 100 days on a path forward.
- There are several states, including CT, IL, and ME that are moving forward with legislation to ban specific PFAS or destruction processes.
- The House intends to consider H.R. 2467, the PFAS Action Act, the week of July 19th. The Chamber will continue its advocacy in opposition to this legislation, communicating concerns with the bill's designation of PFAS substances as hazardous under Superfund/CERCLA, among other problematic provisions.

- Recent infrastructure legislation, H.R. 3684, which passed the House contains broad application of wastewater effluent guidelines impacting select industry sectors consistent with the language in [S. 1907](#). The Chamber is working to oppose these provisions and ensure they are not included in any final bill.

Please contact [Redacted - PII]
[Redacted - PII] *with any questions or to get involved.*

Resilience

The Chamber drafted a [blog](#) of policy suggestions on resilience for collaboration between Congress and the administration. We are also working on convening a workshop between the Council on Infrastructure Financing Authorities and state emergency managers to share experiences on implementing the Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act. These policy suggestions were also included in recent testimony before the House Committee on Transportation and Infrastructure.

The Chamber brought together state emergency managers with state water SRF managers to share best practices and experiences in standing up a new revolving fund program.

We are also engaging the committees of jurisdiction to urge including bipartisan resilience issues in surface transportation legislation. Our resilience coalition sent a letter to the T&I Committee leadership urging that they add bipartisan provisions from the Senate bill ahead of the House T&I mark-up.

Please contact [Redacted - PII] *with any questions.*

TSCA

EPA announced via a press release on June 20, [2021](#) that they will be changing some aspects to how they move forward with TSCA Risk Evaluations by ensuring that environmental justice and fenceline community exposure are considered. EPA will also reexamine some of the completed risk evaluations for the first ten chemicals to determine what exposure pathways may not have been considered before. We are working closely with EPA staff to understand what metrics and screening tools they will engage for this work. EPA has made the request of our members to share examples of fenceline community exposure pathways to help EPA understand the facilities better. If your organization has any of this data (can be anonymous) that you would be comfortable sharing, please let Mary know and we can discuss.

The Chamber continues to be active on regulatory issues related to the Toxic Substances and Control Act (TSCA). In 2020, the Chamber worked with a coalition of trade groups that requested that EPA undertake a formal rulemaking to institute a consistent and transparent approach to risk management under TSCA. This effort resulted in EPA announcing plans for such a rulemaking in the fall 2020 regulatory agenda. The Chamber is now working with partner trades to formally encourage the Biden Administration to carry on with these risk management

plans. [The Chamber led a coalition letter on March 11, 2021](#) to Administrator Regan conveying the importance of framework rulemaking and encouraging Regan's EPA to lead this work. The letter had 20 signatories and we are working with EPA staff now to coordinate a meeting with the trades who signed on to discuss the letter. Meanwhile, the Administration is considering revisions pertaining to an earlier step in the chemical regulation process—risk evaluation. The Chamber expects to continue to engage on issues related to both risk evaluation and risk management rulemakings and welcomes member input on the issue.

Please contact Redacted - PII *with any questions.*

Stormwater Innovation Principles

The Chamber is providing comments to the House Committee on Transportation and Infrastructure on the reauthorization of the Clean Water State Revolving Funds including grant programs on stormwater reuse issues. We are hosting a discussion with EPA and our coalition regarding the potential for more flexible, offsite compliance measures slated for the week of July 26, 2021.

Please contact Redacted - PII *with any questions.*

Water Infrastructure and Policy Priorities

The House passed H.R. 3684, the INVEST in America Act, on July 1, 2021 by a vote of 221 to 201 mostly along party lines. The legislation included the provisions of H.R. 1915, the [Water Quality and Job Creation Act of 2021](#), which contained \$40 billion over five years for the Clean Water SRF and a provision providing \$200 M per year over four years in grants to wastewater systems to treat PFAS and other emerging contaminants. The Chamber endorsed this legislation. There were also language in the bill for which the Chamber has concerns and will work to remove from any final package. The Chamber added Senate S. 914, the Drinking Water and Wastewater Infrastructure Act to our Congressional scorecard as the Senate passed the bill by a vote of 89 to 2. Committee on Environment and Public Works Democrats and Republicans are close to reaching a bipartisan agreement on a water infrastructure approach. We also recently endorsed the Low-Income Water Customer Assistance Program Act to establish a program for affordable drinking water to low-income families. Here are our [2021 water policy priorities](#) for your consideration.

Please contact Redacted - PII *with any questions.*

Waters of the United States

The U.S. Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined "Waters of the United States" ("WOTUS") under the Clean Water Act ("CWA") and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies' efforts at the rule's signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on

April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. On June 9, 2021, the EPA and the Department of the Army announced their intent to revise the definition of WOTUS, stating that such revised definition will better protect our nation's water resources. Concurrently, the Department of Justice filed a motion to remand pending litigation on WOTUS. Finally, in her confirmation testimony as Assistant Administrator for Water, Radhika Fox indicated interest in a regional listening tour to get input on whether and how to revisit the rule.

Please contact [Redacted - PII] **with any questions.**

EPA Cost-Benefit Analysis

On December 9, 2020, EPA finalized a rule that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, the Chamber has been extensively engaged in supporting this rulemaking and emphasizing the importance of transparency and consistency in developing the agency's cost-benefit analyses for rulemakings. Earlier in this process, the Chamber issued a statement, presented [testimony](#) at the agency's public hearing on the rule, launched an advocacy [webpage](#), and submitted [coalition comments](#) in conjunction with several other trades.

On May 13th, EPA [proposed](#) an interim final rule rescinding the 2020 BCA rulemaking. The Chamber filed comments in opposition to this decision [individually](#) and as [part of a coalition](#).

Please contact [Redacted - PII]
[Redacted - PII] **with any questions.**

Please contact [Redacted - PII] **with any questions.**

Chemistry Solutions Working Group

The Chamber has launched a Chemistry Solutions Working Group to convene all aspects of the chemical supply chain and we welcome you to join us. This group is open to all across the Chamber membership and are working to be proactive on issues facing the chemical industry and the entire supply chain.

- We are going to begin convening a subgroup of this committee to discuss ongoing ethylene oxide issues. If you'd like to join this, please let [Redacted - PII] know.
- We have pulled together a **regulatory calendar** for our members to reference of upcoming regulations in 2021 in this space. Please let us know which of these are a priority for your organization so we can work together on them.
- The Chemistry Solutions Working Group just recently hosted a series of meetings with EPA staff on the topics of Environmental Justice, Occupational Hazards and PPE, and TSCA Risk Management. We look forward to continuing to engage with EPA on these topics and more.

Please contact Redacted - PII *with any questions.*

**Leadership Council
Read-Ahead Materials**

September 14, 2021



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Litigation Update

U.S. Chamber Litigation Center Environment & Energy Cases

9/7/2021

Regulatory Reform in the Courts: GEI and the Litigation Center have continued our litigation efforts to overturn costly regulations and support helpful regulatory reforms. The statistics below reflect our efforts in environment or energy cases during 2021 to-date.

- Plaintiff/Intervenor Cases Pending: 14 (2 new cases in 2021)
- Plaintiff/Intervenor Case Outcomes: 3 favorable, 1 unfavorable
- Pending Amicus Cases: 12 (10 new amicus briefs filed in 2021)
- 2021 Outcomes in Amicus Cases: 15 -- 9 favorable; 5 unfavorable; 1 neutral/other

Pending Plaintiff/Intervenor Cases (14)

(* = new challenges filed in 2021)

1. [Chamber v. EPA](#) (NSPS, GHG New Source Performance Standards for EGUs)
2. [Environmental Defense Fund v. EPA](#) (NSR Guidance under Clean Air Act)
3. [Texas v. EPA](#) (CA5; Regional Haze Program)
4. [Chamber v. EPA](#) (CADCC; Regional Haze Program)
5. [American Chemistry Council & Chamber et al. v. EPA](#) (Risk Management Program)
6. [Air Alliance Houston v. EPA](#) (Risk Management Program 2019 Reconsideration Rule)
7. [Colorado v. EPA](#) (D. Colo.; Navigable Waters Protection Rule defining WOTUS under Clean Water Act)
8. [Environmental Integrity Project v. Regan](#) (D.D.C.; Navigable Waters Protection Rule defining WOTUS under Clean Water Act)
9. [Alaska Community Action on Toxics v. CEQ](#) (National Environmental Policy Act (NEPA) - ENGO)
10. [Iowa Citizens for Community Improvement v. CEQ](#) (National Environmental Policy Act (NEPA))
11. [Environmental Justice Health Alliance v. CEQ](#) (National Environmental Policy Act (NEPA))
12. [Sierra Club v. EPA](#) (National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines Residual Risk and Technology Review; Final Rule)
13. *[State of New York v. EPA](#) (2020 review of the National Ambient Air Quality Standards for Ozone)
14. *[State of California v. EPA](#) (2020 review of the National Ambient Air Quality Standards for Particulate Matter)

Plaintiff/Intervenor Outcomes (3 favorable, 1 unfavorable)

Favorable

1. [Colorado v. EPA](#) (CA10; Navigable Waters Protection Rule defining WOTUS under Clean Water Act – appeal from injunction issued by District of Colorado)
2. [Wild Virginia v. CEQ](#) (National Environmental Policy Act (NEPA))

3. [South Carolina Coastal Conservation League v. Wheeler](#) (Navigable Waters Protection Rule defining WOTUS under Clean Water Act)

Unfavorable

1. [American Lung Association v. EPA](#) (Affordable Clean Energy Rule (ACE))

Pending Amicus Cases (12)

(* = new amicus briefs filed in 2021)

1. [Center for Biological Diversity v. U.S. Fish & Wildlife Service](#)
2. [Union of Concerned Scientists v. National Highway Traffic Safety Administration](#)
3. [Northern Plains Resource Council v. US Army Corps of Engineers](#)
4. [Clean Air Council v. U.S. Steel Corporation](#)
5. [Conservation Law Foundation v. EPA](#)
6. *[Michigan v. Enbridge Energy](#)
7. *[Environment Texas Citizens Lobby v. ExxonMobil Corp.](#)
8. *[Pueblo of Laguna v. Regan](#)
9. *[City and County of Honolulu v. Sunoco LP; County of Maui v. Chevron USA Inc.](#)
10. *[Shell Oil Products Co. v. Rhode Island](#)
11. *[California v. Regan](#)
12. *[Mayor & City Council of Baltimore v. BP PLC](#)

2021 Outcomes in Amicus Cases (9 favorable, 5 unfavorable, 1 other)

(* = new amicus briefs filed in 2021)

Favorable

1. [Wheeler v. Arkema France, S.A.](#)
2. [City of New York v. Chevron Corp.](#)
3. [League of Conservation Voters v. Trump](#)
4. [BP PLC v. Mayor & City Council of Baltimore](#)
5. [United States v. Ameren Missouri](#)
6. [Parish of Plaquemines v. Louisiana](#)
7. [Prairie Rivers Network v. Dynegy Midwest Generation, LLC](#)
8. [PennEast Pipeline Co. v. New Jersey](#) (SCOTUS cert. filing)
9. *[PennEast Pipeline Co. v. New Jersey](#) (SCOTUS merits filing)

Unfavorable

1. [Sierra Club v. EPA; Downwinders at Risk v. EPA](#)
2. [FMC Corp. v. Shoshone-Bannock Tribes](#)
3. [Ohio v. Volkswagen Aktiengesellschaft](#)
4. *[New Mexico ex rel. Banderas v. Sterigenics US, LLC](#)
5. *[Chevron Corp. v. City of Oakland](#) (SCOTUS cert.)

Neutral Outcome or Issue Not Addressed

1. [Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers](#) (D.C Cir. merits stage)

Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Border Carbon Adjustment

On July 14th, Senate Democrats announced that the fiscal year 2022 budget resolution would include language directing establishment of a “polluter import fee.” Shortly thereafter, Senator Coons (D-DE) and Representative Peters (D-CA) adjustment fee on certain U.S. imports (S.2378/H.R.4534).

Following introduction of this legislation, the Chamber arranged meetings with congressional staff and member companies to better understand the proposal, and hosted follow-up discussions to gather member input. Our conversations with staff were constructive, and we committed to provide additional Chamber feedback given that the BCA concept was included in the Senate budget resolution and is likely to be under consideration during forthcoming reconciliation discussions.

Based on member input received during this process, the Chamber developed detailed [feedback](#) that was shared with legislative sponsors and key committees on Capitol Hill. We expect to remain engaged on this issue during the coming debates.

Please contact Redacted - PII **with any questions.**

Agency Fall Regulatory Agendas

September 10, 2021 was the deadline for agencies to submit their Fall Regulatory Agendas to OMB for White House review. The final agendas are expected to be out in October following the review and will provide more clarity concerning the Biden Administration’s regulator priorities. The number of regulatory actions being issued is ramping up as more nominations are confirmed and agencies are implementing plans from the President’s climate change executive orders [13990](#) and [14008](#). Evidence of the uptick can be found in the number of regulations being reviewed by the White House, which is now close to 78 actions. The number of rules reviewed by the White House will likely be almost double this number in the coming months as agencies complete their analyses and issue prerules and proposed rulemakings.

Please contact Redacted - PII **with any questions.**

Updating the Social Cost of Carbon

The President reinstituted the interagency working group in the Climate Science order and directed them to issue an update to the SC-GHG, first issuing [interim values](#) in February 2021, followed by final figures no later than January 2022. The February update restores Obama-era valuation estimates, includes \$51 per metric ton of carbon dioxide at a 3% discount rate.

- September 16, 2021 – Hearing in the lawsuit brought by Louisiana and 9 Republican-led states regarding their request for a preliminary injunction to stop the use of the SC-GHG estimates.

- September 1, 2021 – This is the date that the interagency working group was to have issued recommendations to the President on the application of the SC-GHG beyond regulation. The recommendations have yet to be made public.
- August 31, 2021 - Judge Audrey Fleissig of U.S. District Court for the Eastern District of Missouri dismissed the lawsuit brought by 13 Republic-led states concerning economic harm that would occur if the SC-GHG were applied. The judge wrote that the harm was speculative at this point and is “unknowable” in advance of any possible future regulations whether they would have any causal connection to the SC-GHG.
- May 7, 2021 - The Office of Management and Budget (OMB) issued a notice requesting comment on the February interim update to the social costs of carbon, methane, and nitrous oxide (SC-GHG). The OMB notice requests comment on several topics including the best approach to implement the National Academy of Sciences recommendations; to account for climate risk, environmental justice, and intergenerational equity; the appropriate discount rate to account for intergenerational equity; the areas where to apply the SC-GHG including in decision-making, budgeting, and procurement. The Chamber pulled together a coalition of 23 trades that submitted joint comments on the OMB notice [calling for a robust public engagement process](#) as the IWG considers longer-term revisions.

Please contact Chad Whiteman Redacted - PII **with any questions.**

Federal Lands Leasing Ban

Federal lands and waters make up 22% of total us oil production and 12% total natural gas production. Any ban would create significant uncertainty for operators and curtail investment in future exploration and production. We have partnered with our Federation members to aggressively explain how these policies are nearsighted and counterproductive to growing the economy and reducing greenhouse gas emissions.

- In response to an adverse ruling in federal court, on August 31, 2021 - DOI began holding lease sales in several states including [MS](#), [MT](#), [ND](#), and [NM](#). [Previously BOEM announced it will hold the next OCS lease sale in 1Q 22.](#)
- On June 15, 2021, Judge Terry Doughty of the Western District of Louisiana issued a preliminary injunction ordering new oil and gas leasing to restart on federal lands and waters nationwide, holding that plaintiffs had shown a likelihood of success on the merits on their claim that DOI’s leasing pause violated the Mineral Leasing Act (MLA) and Outer Continental Shelf Lands Act (OCSLA).
- On June 1, 2021, Interior Secretary Deb Haaland suspended leases in the Alaska National Wildlife Refuge (ANWR), citing a need for further environmental reviews.
- On January 27th, 2020, President Biden issued [Executive Order 14008](#), which among other things, indefinitely bans new oil and natural gas leasing on federal lands and waters. This action followed on the January 20th, [Secretarial Order](#) revoking normal delegation of authority for 60 days to Interior’s bureaus of the authority to issue new leases, lease amendments, permits, etc. During this indefinite ban, the EO directs Interior to reassess the fossil fuel leasing programs as well as the respective royalty processes.

Please contact Christopher Guith [Redacted - PII] **with any questions.**

Endangered Species Act Revisions

BLM to reopen sage grouse policy for three items: (1) [reconsider](#) the 2016 proposal to withdraw 10 million acres of land in northern NV under NEPA, (2) reevaluate policy regarding compensatory mitigation, and (3) reevaluate the 2019 Greater Safe Grouse Resource Management Plan by early November.

In June 2021, DOI announced it would be revising several of the Trump administration rules pertaining to the Endangered Species Act. Below are the latest updates:

- On July 9, 2021, FWS submitted a proposed rule to OMB for review. The rule is expected to rescind the December 18, 2020, regulations that revised the FWS process for considering exclusions from critical habitat designations under section 4(b)(2) and propose to revert back to the joint 2016 FWS/NMFS regulations at 50 CFR 424.19.
- On Jun 30, 2021, FWS/NOAA submitted a joint proposed rule to OMB for review. The rule is expected to rescind the regulatory definition of "habitat" for the purposes of critical habitat designations ([85 FR 81411; December 16, 2020](#)). FWS stated a definition is not required to designate critical habitat in compliance with a 2018 SCOTUS decision.
- Revise regulations (84 FR 45020; August 27, 2019) for listing species and designating critical habitat to reinstate prior language affirming that listing determinations are made "without reference to possible economic or other impacts of such determination."
- Revise regulations for interagency cooperation ([84 FR 44976; August 27, 2019](#)) governing section 7 consultation and "effects of the action."
- Reinstate the "blanket 4(d) rule," which was withdrawn by the previous Administration ([84 FR 44753; August 27, 2019](#)) and establish the default of automatically extending protections provided to endangered species to those listed as threatened, unless the FWS adopts a species-specific 4(d) rule.

Please contact [Redacted - PII]
[Redacted - PII] **with any questions.**

Electric Sector Supply Chain Activities

On January 20, 2021, one of President Biden's first [executive orders](#) (EOs) suspended for ninety (90) days the effectiveness of the Trump Administration's May 1, 2020, [executive order](#) which sought to limit the suppliers of electric grid equipment and prohibit the purchase and use of such equipment from countries deemed adversarial to domestic grid security (the "BPS EO"). Following this suspension, we received direct confirmation from the Department of Energy (DOE) that the suspension also applied to the [Prohibition Order](#) that DOE issued on December 17, 2020. The Prohibition Order sought to specifically ban numerous categories of equipment, firmware, and software at or within bulk power system facilities that serve or support critical defense facilities. However, subsequent FAQ guidance from DOE, as well as inquiries from supply chain customers, made unclear the applicability and enforceability of the Prohibition

Order. In the wake of this confusion, and amongst less formal outreach, the Chamber on March 1, 2021, submitted a [letter](#) to Secretary of Energy Granholm and key White House officials requesting that DOE undertake meaningful outreach with bulk power system supply chain stakeholders before DOE determines its next steps. This letter leveraged some of the points we previously filed with DOE in [comments](#) responsive to the Request for Information DOE issued in response to the BPS EO.

On April 20, 2021, DOE [announced](#) its “100-Day Sprint” on bulk power system cybersecurity. This effort is focused on encouraging grid owners and operators to implement measures or technology (including Neighborhood Keeper) that enhances the detection, mitigation, and forensic capabilities on their systems. Accompanying this initiative, DOE issued a [revocation](#) of the December Prohibition Order, and also issued a [new Request for Information](#) (the “2021 RFI”) seeking additional stakeholder input in advance of additional activities by DOE directed at securing the bulk power system supply chain. The Chamber has held multiple conversations with high-level DOE personnel in the wake of these actions, and worked extensively with its Bulk Power System Supply Chain Working Group to develop responsive [comments](#) to DOE’s 2021 RFI that were submitted on June 7, 2021. On August 25, 2021, the President and White House national security personnel met with various energy industry CEOs to discuss critical infrastructure resilience and associated cybersecurity concerns. As of early September, the Chamber received confirmation that DOE was still formulating its future plans in this space. The Chamber is also collaborating with the Edison Electric Institute and the North American Transmission Forum on the development of a single repository or library to streamline the analysis and implementation of potential future supply chain restrictions.

On a separate track, the Federal Energy Regulatory Commission (FERC) on September 17, 2020, issued its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its members, the Chamber submitted [comments](#) responsive to FERC’s NOI on November 23, 2020. Further action by FERC responsive to the NOI is anticipated.

Please contact Redacted - PII **with any questions on electric sector supply chain activities.**

Executive Order on America’s Supply Chains

On February 24, 2021, President Biden issued [Executive Order 14017](#), “America’s Supply Chains.” This executive order directs an immediate 100-day review across federal agencies to address vulnerabilities in the supply chains of four key product areas: pharmaceuticals and active pharmaceutical agreements; critical minerals, including rare earths; semiconductors and advanced packaging; and large capacity batteries, such as those used in electric vehicles. In addition, the order calls for a more in-depth one-year review of a broader set of U.S. supply chain sectors focusing on: the energy sector industrial base; the information and communications technology (ICT) industrial base; the transportation industrial base; the defense industrial base; the public health and biological preparedness industrial base; and the supply chains for agricultural commodities and food production. The Chamber has established a

cross-sectoral internal working group to coordinate the Chamber's collection of information and analysis, as well as to formulate the Chamber's advocacy, regarding this far-reaching executive order. On April 14, 2021, the Chamber submitted [comments](#) responsive to the Department of Energy's March 23, 2021, [Request for Information](#) regarding risks in the high-capacity battery supply chain, including as it relates to batteries for electric vehicles, data centers and telecommunications, and consumer devices. On April 28, 2021, the Chamber provided [comments](#) in response to the U.S. Department of Defense's [request for input](#) regarding risks in the supply chain for strategic and critical materials, and also joined [comments](#) submitted by the Council of Defense and Space Industry Associations addressing the same topic.

On June 8, 2021, the Administration issued a report entitled "[Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth](#)" that concludes the 100-day review. A [fact sheet](#) was also released. The report proposes a significant number of actions as part of a "whole of government" approach to strengthen the resilience of the supply chains for these four industries, including interagency task forces, new trade actions, and legislation that would support increased domestic production, invest in new production and processing of critical minerals, combat unfair trade practices, and strengthen reliance on key U.S. allies. This report was accompanied by a DOE-led National Blueprint for Lithium Batteries that details a number of specific steps the Administration plans to take to address concerns regarding sourcing and manufacturing related to electric vehicles. The Chamber is reviewing the recommendations in these reports and welcomes member input as we move forward.

Please contact Redacted - PII
Redacted - PII **with any questions.**

Energy Innovation Legislation

In late December, the Energy Act of 2020 was included in omnibus appropriations legislation that was signed into law just before adjournment of the 116th Congress. Passage of the legislation completed work on one of the Chamber's top legislative priorities in 2020. The Chamber worked closely with members of Congress and key committee staff on both sides of the aisle to craft and mobilize support for the bill and the dozens of individual pieces of legislation that were included in it. In response, Marty Durbin issued a [statement](#) noting that successful passage of the Energy Act proves "there is common ground on which all sides of the debate can come together to begin to address climate change, promote American technological leadership, and foster continued economic growth." As significant infrastructure legislation takes form, the Chamber is working to ensure the individual programs and activities authorized by the Energy Act are fully funded through the related budgeting and appropriations process.

On July 16, the House Appropriations Committee passed the Energy and Water Appropriations legislation for fiscal year 2022 and included strong funding levels for most key Energy Act of 2020 programs. More recently, the Chamber has strongly advocated for the passage by Congress of the Bipartisan Infrastructure Investment and Jobs Act, which would provide over \$35 billion across five years in new funding for core climate and energy technology programs.

Please reference our recent [Above the Fold blog](#) for additional details on why the bipartisan infrastructure package supports energy innovation and significant climate action. A vote by the House of Representatives on this Senate-passed package is anticipated by September 27, 2021.

Please contact [Redacted - PII]
[Redacted - PII] **with questions.**

EPA MATS Rule

On April 16, 2020, the EPA issued its [final rule](#) modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA's proposal to eliminate the "appropriate and necessary" finding underlying the emissions standards that have now been implemented across the impacted generating units. Unfortunately, the MATS final rule stayed its course by removing the "appropriate and necessary" finding, while retaining the compliance obligations therein. On January 20, 2021, an early Biden Administration [Executive Order](#) committed to review a significant number of EPA rules and regulations, including the MATS final rule published on May 22, 2020. While lawsuits are also pending on this rule, we anticipate that the Biden Administration's review of this rule could moot some of that litigation through the reinstatement of the "appropriate and necessary" finding noted above. In addition, it is anticipated that EPA's forthcoming revisions to the MATS rule could seek comment on a potential reassessment of the accompanying Residual Risk and Technology Review. On September 7, 2021, the Chamber participated with other interested trade associations and groups in an E.O. 12866 meeting on this rule, which is currently undergoing White House review..

Please contact [Redacted - PII] **with any questions.**

FERC Transmission Reform Rulemaking

At its July 15, 2021 open meeting, the Federal Energy Regulatory Commission (FERC) initiated a rulemaking proceeding to reconsider the Commission's transmission planning, associated cost allocation, and generator interconnection processes. This monumental undertaking was launched with the issuance of an advance notice of proposed rulemaking (ANOPR) entitled "[Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection](#)." Among other things, the ANOPR asks how transmission planning should consider future scenarios, whether transmission providers should establish a process to identify geographic zones that have the potential for the development of large amounts of renewable generation, whether reforms are needed to improve the coordination between the regional transmission planning and cost allocation and generator interconnection processes; how to appropriately identify and allocate the costs of new transmission facilities, and whether participant funding of interconnection-related network upgrades may be proven to be unjust and unreasonable. The ANOPR also seeks comment regarding whether the current

approach to oversight of transmission investment adequately protects customers. Following the Commission's recent rejection of an extension to the initially-established comment period, initial comments responsive to the ANOPR remain due on October 12, 2021. FERC did, however, extend the deadline for reply comments to November 30, 2021. The Chamber welcomes input from its members on the content of the initial higher-level comments that it plans to submit in this proceeding.

Please contact Redacted - PII **with any questions.**

FERC Pipeline Certification Regulations

On April 19, 2018, FERC issued a [Notice of Inquiry](#) (NOI) initiating a review of its 1999 interstate natural gas Certificate Policy Statement, which the Commission utilizes to guide its evaluation of natural gas pipeline infrastructure projects. The Global Energy Institute submitted [comments](#) responsive to this NOI on July 25, 2018. On February 18, 2021, FERC issued a [revised NOI](#) in the same docket (PL18-1-000), reiterating a number of the questions posed in 2018 while adding a number of new and revised questions and an additional broad area of inquiry, which is focused on FERC's consideration of the effects of its pipeline certification process on environmental justice communities. FERC's aim with the issuance is to "refresh the record and provide updated information and additional viewpoints to help the Commission assess its policy." On May 26, 2021, the Chamber submitted [comments](#) responsive to this revised NOI. Commission action responsive to the submitted comments is anticipated sometime after the anticipated confirmation and swearing-in of D.C. Public Service Commission Chairman Willie Phillips as FERC's 5th Commissioner later this year.

Please contact Redacted - PII **with any questions.**

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the "one-mile rule" used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities' access to wholesale markets, among other things. Concurrent with FERC's finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC's final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020.

A number of lawsuits challenging FERC's final rule on PURPA were filed and consolidated in the 9th Circuit Court of Appeals. On May 27, 2021, Petitioner Solar Energy Industry Association and

Petitioner Montana Environmental Information Center, et al., submitted their opening briefs. Pursuant to a modified briefing schedule issued by the court on June 23, 2021, Intervenor and amici curiae supporting the Petitioners now have their briefs due on July 23, 2021. FERC's respondent brief will now be due on October 21, 2021, and respondent-intervenor briefs and amicus briefs in support of FERC's PURPA final rule will be due on November 22, 2021. The Chamber anticipates playing a role as an amicus, with industry allies, in defense of PURPA's modernization.

Please contact [Redacted - PII] **with any questions.**

Migratory Bird Treaty Act

On May 7, 2021, the U.S. Fish and Wildlife Service issued a proposed rule that would rescind the Trump final rule that interpreted the Migratory Bird Treaty Act's ("MBTA") prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. Prior to the May action, the Biden administration issued an extension of the effective date of the Trump rule out to March 8, 2021. The Chamber submitted comments on both the [May 7th](#) and [March](#) notices.

Bald and Golden Eagle Protection Act

In a recent court filing, the U.S. Fish and Wildlife Service indicated that they would issue an advanced notice of proposed rulemaking regarding the eagle incidental take permit system. the permit program requires the private sector to fund conversation measures to offset incidental take from energy operations.

Please contact [Redacted - PII]
[Redacted - PII] **with any questions.**

Nationwide Permit Coalition Comments

The Army Corps of Engineers finalized updates to the Nationwide Permit program on January 13, 2021. On January 20, 2021, the Biden administration issued a [regulatory freeze](#) for new and pending rules, including rules published in the *Federal Register* but not yet implemented, to provide the new administration time for review. The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer's [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community's broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation.

A [lawsuit](#) was filed in May 2021 against the Corps by the Center for Biological Diversity, Sierra Club, Friends of the Earth, Waterkeeper Alliance, and Montana Environmental Information Center, stating that the Endangered Species Act requires consultation with relevant agencies to complete a NWP.

Please contact [Redacted - PII] or Christopher Guith
[Redacted - PII] with any questions.

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy—energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others—to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- 8/10/2021 - As part of the \$1 trillion Bipartisan Infrastructure Bill, the Senate included the One Federal Decision policy provisions that would streamline the NEPA review process. The bill also reauthorizes FAST-41 by removing the 2023 sunset provision and expands coverage to projects sponsored by Tribes.
- 8/2/2021 - The Council on Environmental Quality (CEQ) submitted a proposed rule to the White House for review that is phase 1 of their two step process to revise the 2020 Trump rulemaking. The Chamber led the Unlock American Investment in a coalition meeting with the White House on August 25th supporting the streamlining provisions of the 2020 rule.
- 7/13/2021 – Senators Portman and Sinema introduced the “[Federal Permitting Reform and Jobs Act](#),” which would reauthorize Title 41 of the Fixing America's Surface Transportation Act (FAST-41) of 2015 to help improve the efficiency and coordination of federal permitting decisions for critical infrastructure. The Chamber issued a letter of support and has added the bill to the Leadership list to reward bipartisan efforts.
- 6/21/2021 – The U.S. District Court for the Western District of Virginia dismissed one of the five lawsuits brought by environmental groups challenging a CEQ 2020 rule.
6/29/2021 – [CEQ issues interim final rule](#) moving back by two years the date by which federal agencies are required to propose updates to their NEPA procedures to conform to CEQ's 2020 rule. The Chamber's Unlock American Investment coalition issued a [letter](#) opposing the delay due to the confusion and uncertainty it would create.

Please contact [Redacted - PII] with any questions.

Risk Management Plan (RMP) Reconsideration

On June 16th and July 8, 2021, EPA held public listening sessions to give interested parties the opportunity to present information and provide comment on views pertaining to the revisions made to the RMP rule since 2017. The [Chamber gave testimony](#) at the EPA public hearing held on July 8, 2021, supporting the smart regulations that recognize industry progress, promoting coordination with OSHA, and cautioning against the security risks of requiring the public disclosure of too much information. Section 112(r) of the Clean Air Act Amendments requires EPA to publish regulations and guidance for chemical accident prevention at facilities that use certain hazardous substances. These regulations were updated in 2017 and then in 2019. In the 2019 rule, EPA concluded that a better approach is to improve the performance of a subset of facilities by achieving greater compliance with RMP regulations instead of imposing additional regulatory requirements on the larger population of facilities that is generally

performing well in preventing accidental releases. For this and other reasons, EPA rescinded some of the 2017 amendments that were unreasonable or not practicable relating to safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor regulatory changes. In January of this year, the Biden Administration identified the RMP rule as an action for review under Executive Order 13990: Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.

Please contact [Redacted - PII] **with any questions.**

Light-duty Vehicle Standards

The years-long negotiations between the Federal government, California, and automakers over fuel economy and greenhouse gas (GHG) standards is continuing in the Biden Administration. Since 2019, the Chamber has become more active in engaging in these issues, actively lobbying for middle-ground solutions that deliver steady fuel economy gains, preserve a single national market for auto sales and unite stakeholders.

The Trump Administration finalized rules known as “SAFE 1” (rescinding California’s special Clean Air Act waiver to set standards more stringent than the federal government) and “SAFE 2” (revised passenger vehicle fuel economy standards for model years 2021-2026).

- On May 12, 2021, EPA/DOT issued a proposed rule to fully repeal the “SAFE 1” rulemaking and withdraw the interpretative statements that allow states to adopt CA’s vehicle standards for criteria pollutants, but not its GHG vehicle standards and zero emission vehicle sales mandates.
- On August 10, 2021, EPA proposed increasing the stringency of the “SAFE 2” rulemaking for MY 2023 through 2026 standards by 1.5 percent each year while maintaining the current standards for MYs 2021 and 2022. This would raise the current mpg equivalent from 43 to 52 mpg. Comments on the proposal are due September 27.

The Chamber intends to remain engaged on this issue and seek a middle-ground solutions that are acceptable to its broad membership.

Please contact [Redacted - PII] **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019, the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration’s Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA’s CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber’s [brief](#), submitted primarily in defense of the EPA’s repeal of the CPP, was submitted on July 16, 2020. On October 8, 2020, the Court held oral argument on the merits of the EPA’s repeal of the CPP and its promulgation of the ACE Rule.

On January 19, 2021, the U.S. Court of Appeals for the D.C. Circuit issued a 2-1 [opinion](#) vacating the Trump EPA's rules rescinding the CPP and replacing it with the ACE Rule. The majority opinion held that the Clean Air Act does not constrain EPA to "inside the fence" mechanisms to achieve greenhouse gas emissions reductions. The order further rejected the replacement ACE Rule as representing an overly constrained view of the agency's authority. The Court remanded the rulemaking to EPA for the agency to reassess its power plant greenhouse gas regulations. Judges Millett and Pillard (both Obama appointees) supported the full opinion, while Judge Walker (a Trump appointee) wrote a statement concurring in part and dissenting in part.

On February 22, 2021, the D.C. Circuit granted EPA's unopposed motion for a partial stay of issuance of the mandate and requested status reports from EPA at 90-day intervals. On April 29, 2021, a group of states led by West Virginia filed with the U.S. Supreme Court a petition for certiorari of the D.C. Circuit's ACE Rule decision. The North American Coal Corporation filed its own petition for cert. similarly challenging the D.C. Circuit's disposition of the ACE Rule. On August 5, 2021, EPA filed its opposition to the state and industry petitions for cert. of the D.C. Circuit decision overturning the prior administration's repeal and replacement of the Clean Power Plan. A Supreme Court decision on the cert. petitions is anticipated in the Fall. The Chamber continues to monitor these developments.

Please contact Redacted - PII ***with any questions.***

First Proposed Chemical Addition to CAA Hazardous List

On June 11, 2021, EPA issued an advanced notice of proposed rulemaking soliciting information regarding the addition of 1-bromopropane (1-BP) to the list of hazardous air pollutants (HAP) covered under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) program established under Section 112 of the Clean Air Act (CAA). The Halogenated Solvents Industry Alliance and New York State Department of Environmental Conservation submitted petitions to add 1-BP as a HAP in 2010 and 2011, respectively, that initiated this process. If EPA were to add 1-BP as a HAP, it would be precedent setting for other chemicals as this would be the first time that a substance would be added since the initial HAP list was established by the 1990 CAA Amendments. In part for this reason, the Chamber participated in [coalition comments](#) pointing out the administrative steps the agency needs to take if it were to add any new chemical and commented on various other provisions including the potential implications for immediate compliance impacts to facilities.

Please contact Redacted - PII ***with any questions.***

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hard rock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings via a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. The Administration did not include this final rule in its non-exhaustive listing of EPA actions to review as part of President Biden’s [Executive Order](#) on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.

Please contact Redacted - PII with any questions.

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On remand, the Federal District Court in Hawaii issued a July 15, 2021 decision holding that the Hawaiian island of Maui must obtain a Clean Water Act permit for discharges of wastewater that find their way into the ocean, concluding that the injection into underground wells that the county knows will reach the ocean amounts to the equivalency test established by the Supreme Court. Following the County of Maui’s submission on August 19, 2021, of a motion for reconsideration of this decision on remand, the District Court somewhat surprisingly established a briefing schedule and forthcoming oral argument to be held in consideration of the motion for reconsideration on October 12, 2021.

On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020. On June 28, 2021, the Seventh Circuit [affirmed dismissal](#) of the association's Clean Water Act citizen suit for lack of jurisdiction, holding that the complaint failed to show that any of the plaintiff's members had standing.

Separately, EPA proposed in December 2020 a guidance document that identifies one additional factor for consideration when evaluating whether and how to perform a "functional equivalent" analysis; specifically the "design and performance of the system or facility from which the pollutant is released." EPA finalized this [guidance](#) on January 14, 2021. While a guidance document such as this does not have the force and effect of law, it is anticipated that the Biden EPA will reevaluate this approach to the "functional equivalent" analysis.

Please contact Redacted - PII **with any questions.**

HFC Phasedown Legislation

The Chamber along with our trade association colleagues submitted [comments](#) on the AIM Act Allocation Rule on July 6, 2021 and have several meetings with EPA for updates on their thinking on next steps. The rule is still under review by OMB with expectation for final signature by the end of September 2021. We are also working with our coalition of companies and trades to support Kigali amendment ratification, which critical to the U.S. business community receiving the global trade and enforcement benefits of AIM Act passage.

Please contact Redacted - PII **with any questions.**

Marine Debris and Recycling

The Chamber is joining the American Chemistry Council, the National Association of Manufacturers, and other members and trades to develop Save Our Seas 3.0 and other recycling infrastructure and marine debris priorities. There are provisions in the [Bipartisan Infrastructure Framework](#) providing \$75 M for recycling education and \$275 M or \$55 M annually for SOS 2.0 post-consumer management and infrastructure. In addition, EPA is expected to imminently finalize the National Recycling Strategy, which recommits the U.S. to increasing the national recycling rate to 50% by 2030.

Please contact Redacted - PII **with any questions.**

Ozone and Particulate Matter NAAQS Review

EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM2.5 NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m3 to 12 ug/m3. The Ozone standards were last tightened in 2015, when the agency lowered the ambient standards from 75 to 70 parts per million. EPA issued their final actions in December 2020 to retain the current NAAQS standards for both ozone and PM.

On August 30, 2021, EPA announced the membership to the Clean Air Scientific Advisory Committee's (CASAC) supplemental particular matter (PM) panel that will focus on the Biden Administration's review of the PM ambient standards. The panel includes 20 from academia, one environmental organization, and one state environmental agency. On June 10th, EPA [announced](#) its plans to reconsider the 2020 PM2.5 NAAQS decision that retained the existing ambient standards. EPA expects to issue a proposed rulemaking in Summer 2022 and a final rule in Spring 2023.

In recent court filings, EPA indicated that they will announce their plans by October 22, 2021, regarding whether they will also reconsider the Ozone NAAQS or allow the litigation to continue challenging the Trump administration's decision to retain the current standards. In response to lawsuits challenging the standards, the Chamber along with other trades have intervened to support their retention.

Please contact Redacted - PII **with any questions.**

PFAS

The Chamber included opposing the PFAS Action Act in our Congressional Scorecard. [The PFAS Action Act](#) passed the House by a vote of 241 to 182 with 23 Republicans joining Democrats in supporting the bill. Key provisions of the bill include:

- Require the EPA to establish a national drinking water standard for PFOA and PFOS within two years that protects public health, including the health of vulnerable subpopulations
- Designate PFOA and PFOS chemicals as hazardous substances within one year and require the EPA to determine whether to list other PFAS within five years
- Designate PFOA and PFOS as hazardous air pollutants within 180 days and require the EPA to determine whether to list other PFAS within five years
- Require the EPA to place discharge limits on industrial releases of PFAS from ten sectors and provide \$200 million annually to upgrade water infrastructure
- Prohibit incineration of PFAS wastes and place a moratorium on the introduction of new PFAS into commerce
- Require comprehensive PFAS health testing
- Create a voluntary label for PFAS in cookware and other products

The National Defense Authorization Act for FY22 is expected the House floor this week with several concerning provisions such as providing a temporary ban on incineration especially for AFFF firefighting foam and precluding the DoD procurement of many products containing PFAS. There is also language calling DoD to follow any stricter state clean-up standards. The coalition provided [comments](#) in response to EPA's interim guidance and PFAS waste disposal and destruction. The guidance was prepared in response to an amendment to the FY2020 National Defense Authorization Act that requires development and update every three years. We also submitted comments on EPA unregulated contaminant water monitoring rule, which includes 29 PFAS.

There are also several imminent regulatory opportunities to weigh in:

- Any suggestions on possible submissions for [experts to help with IRIS reviews](#) of PFAS? The submission is due on September 22, 2021.
- Your priorities for [the PFAS TSCA recordkeeping a reporting rule](#). I would like to build on our extension request comments attached. Comments are due on September 27, 2021. I would like to have a draft together by early next week.
- Should we weigh in on the [draft of the first EPA-validated laboratory analytical method](#) PFAS in eight different environmental media, including wastewater, surface water, groundwater, and soils?
- EPA also released a wastewater [effluent guideline plan](#) for several sectors, including chemicals, plastics and synthetic fibers and metal finishing.

Please contact

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with any questions or to get involved.

Resilience

The Chamber drafted a [blog](#) of policy suggestions on resilience for collaboration between Congress and the administration. The Chamber convened a workshop between the Council on Infrastructure Financing Authorities and state emergency managers to share experiences on implementing the Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act. We followed up with a [coalition letter](#) to FEMA highlighting several recommendations for STORM Act implementation. There are numerous resilience provisions in the Bipartisan Infrastructure Framework, including appropriations \$1 billion for the Building Resilient Infrastructure and Communities program and \$500 million for the STORM Act.

Please contact

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with any questions.

TSCA

EPA announced via a press release on June 20, [2021](#) that it will be changing some aspects of TSCA Risk Evaluations by ensuring that environmental justice and frontline community exposure are considered. EPA will also reexamine some of the completed risk evaluations for the first ten chemicals to determine what exposure pathways may not have been considered before.

Please contact

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with any questions.

Stormwater Innovation Principles

The Chamber is providing comments to the House Committee on Transportation and Infrastructure on the reauthorization of the Clean Water State Revolving Funds including grant programs on stormwater reuse issues. We are hosting a discussion with EPA and our coalition regarding the potential for more flexible, offsite compliance measures slated for the week of July 26, 2021.

Please contact

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with any questions.

Water Infrastructure and Policy Priorities

The Chamber included passage of [S. 914, Water and Wastewater Infrastructure Act in our Congressional Scorecard](#). The legislation included unprecedented authorization levels in for drinking water and clean water SRF programs. The bill passed the Senate by a broad bipartisan vote of 89 to 2. The Bipartisan Infrastructure Framework included much of this language as well as \$55 billion in appropriations (\$15 billion for lead service lines and \$10 billion for PFAS). Here are our [2021 water policy priorities](#) for your consideration.

Please contact Redacted - PII *with any questions.*

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. On June 9, 2021, the EPA and the Department of the Army announced their intent to revise the definition of WOTUS, stating that such revised definition will better protect our nation’s water resources. Concurrently, the Department of Justice filed a motion to remand pending litigation on WOTUS. More recently, the Chamber submitted a request to extend the comment period and joined the Water Advocacy Coalition comments urging the agency to retain several commonsense principles of the Navigable Waters Protection Rule. At the same, a court decision in Arizona vacated the NWPR, so EPA and the USACE have indicated their intention enforce the pre-2015 definitions until they proceed with a rulemaking to replace them.

Please contact Redacted - PII *with any questions.*

EPA Cost-Benefit Analysis

On December 9, 2020, EPA finalized a rule that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, the Chamber has been extensively engaged in supporting this rulemaking and emphasizing the importance of transparency and consistency in developing the agency’s cost-benefit analyses for rulemakings. Earlier in this process, the Chamber issued a statement, presented [testimony](#) at the agency’s public hearing on the rule, launched an advocacy [webpage](#), and submitted [coalition comments](#) in conjunction with several other trades.

On May 13th, EPA [proposed](#) an interim final rule rescinding the 2020 BCA rulemaking. The Chamber filed comments in opposition to this decision [individually](#) and as [part of a coalition](#).

Please contact

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with any questions.

Chemistry Solutions Working Group

The Chamber has launched a Chemistry Solutions Working Group to convene all aspects of the chemical supply chain and we welcome you to join us. This group is open to all across the Chamber membership and are working to be proactive on issues facing the chemical industry and the entire supply chain.

PIP 3:1

The EPA announced on Sept. 3 that it had signed an interim rule extending the Sept. 4, 2022, deadline for its TSCA rule governing phenol, isopropylated phosphate (3:1) or PIP (3:1) to March 8, 2022. EPA's move averts a blanket ban that was scheduled to take effect Sept. 4, when a "no-action" enforcement assurance issued on March 8 was due to expire. The PIP rule was originally slated to take effect then, but industry warned that dropping it from the supply chain that quickly would require shutting down vast swaths of the manufacturing sector. The Sept. 3 announcement acknowledges those claims, saying "EPA is extending certain compliance dates for PIP (3:1) to March 8, 2022, to address the hardships inadvertently created by the original applicable compliance dates in the January 2021 final rule to ensure that supply chains are not disrupted for key consumer and commercial goods." EPA says it will consider further extensions only if industry submits requests supported by "specific" information on a host of subjects related to the chemical.

Please contact

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with any questions.

**Energy and Environment Committees
Read-Ahead Materials**

September 15, 2021



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Read-Ahead for the Energy, Clean Air, and Natural Resources Issues

Border Carbon Adjustment

On July 14th, Senate Democrats announced that the fiscal year 2022 budget resolution would include language directing establishment of a “polluter import fee.” Shortly thereafter, Senator Coons (D-DE) and Representative Peters (D-CA) adjustment fee on certain U.S. imports (S.2378/H.R.4534).

Following introduction of this legislation, the Chamber arranged meetings with congressional staff and member companies to better understand the proposal, and hosted follow-up discussions to gather member input. Our conversations with staff were constructive, and we committed to provide additional Chamber feedback given that the BCA concept was included in the Senate budget resolution and is likely to be under consideration during forthcoming reconciliation discussions.

Based on member input received during this process, the Chamber developed detailed [feedback](#) that was shared with legislative sponsors and key committees on Capitol Hill. We expect to remain engaged on this issue during the coming debates.

Please contact Redacted - PII *with any questions.*

Agency Fall Regulatory Agendas

September 10, 2021 was the deadline for agencies to submit their Fall Regulatory Agendas to OMB for White House review. The final agendas are expected to be out in October following the review and will provide more clarity concerning the Biden Administration’s regulator priorities. The number of regulatory actions being issued is ramping up as more nominations are confirmed and agencies are implementing plans from the President’s climate change executive orders [13990](#) and [14008](#). Evidence of the uptick can be found in the number of regulations being reviewed by the White House, which is now close to 78 actions. The number of rules reviewed by the White House will likely be almost double this number in the coming months as agencies complete their analyses and issue prerules and proposed rulemakings.

Please contact Redacted - PII *with any questions.*

Updating the Social Cost of Carbon

The President reinstituted the interagency working group in the Climate Science order and directed them to issue an update to the SC-GHG, first issuing [interim values](#) in February 2021,

followed by final figures no later than January 2022. The February update restores Obama-era valuation estimates, includes \$51 per metric ton of carbon dioxide at a 3% discount rate.

- September 16, 2021 – Hearing in the lawsuit brought by Louisiana and 9 Republican-led states regarding their request for a preliminary injunction to stop the use of the SC-GHG estimates.
- September 1, 2021 – This is the date that the interagency working group was to have issued recommendations to the President on the application of the SC-GHGs beyond regulation. The recommendations have yet to be made public.
- August 31, 2021 - Judge Audrey Fleissig of U.S. District Court for the Eastern District of Missouri dismissed the lawsuit brought by 13 Republic-led states concerning economic harm that would occur if the SC-GHG were applied. The judge wrote that the harm was speculative at this point and is “unknowable” in advance of any possible future regulations whether they would have any causal connection to the SC-GHG.
- May 7, 2021 - The Office of Management and Budget (OMB) issued a notice requesting comment on the February interim update to the social costs of carbon, methane, and nitrous oxide (SC-GHG). The OMB notice requests comment on several topics including the best approach to implement the National Academy of Sciences recommendations; to account for climate risk, environmental justice, and intergenerational equity; the appropriate discount rate to account for intergenerational equity; the areas where to apply the SC-GHG including in decision-making, budgeting, and procurement. The Chamber pulled together a coalition of 23 trades that submitted joint comments on the OMB notice [calling for a robust public engagement process](#) as the IWG considers longer-term revisions.

Please contact Redacted - PII **with any questions.**

Federal Lands Leasing Ban

Federal lands and waters make up 22% of total us oil production and 12% total natural gas production. Any ban would create significant uncertainty for operators and curtail investment in future exploration and production. We have partnered with our Federation members to aggressively explain how these policies are nearsighted and counterproductive to growing the economy and reducing greenhouse gas emissions.

- In response to an adverse ruling in federal court, on August 31, 2021 - DOI began holding lease sales in several states including [MS](#), [MT](#), [ND](#), and [NM](#). [Previously BOEM announced it will hold the next OCS lease sale in 1Q 22.](#)
- On June 15, 2021, Judge Terry Doughty of the Western District of Louisiana issued a preliminary injunction ordering new oil and gas leasing to restart on federal lands and waters nationwide, holding that plaintiffs had shown a likelihood of success on the merits on their claim that DOI’s leasing pause violated the Mineral Leasing Act (MLA) and Outer Continental Shelf Lands Act (OCSLA).
- On June 1, 2021, Interior Secretary Deb Haaland suspended leases in the Alaska National Wildlife Refuge (ANWR), citing a need for further environmental reviews.

- On January 27th, 2020, President Biden issued [Executive Order 14008](#), which among other things, indefinitely bans new oil and natural gas leasing on federal lands and waters. This action followed on the January 20th, [Secretarial Order](#) revoking normal delegation of authority for 60 days to Interior's bureaus of the authority to issue new leases, lease amendments, permits, etc. During this indefinite ban, the EO directs Interior to reassess the fossil fuel leasing programs as well as the respective royalty processes.

Please contact Christopher Guith Redacted - PII **with any questions.**

Endangered Species Act Revisions

BLM to reopen sage grouse policy for three items: (1) [reconsider](#) the 2016 proposal to withdraw 10 million acres of land in northern NV under NEPA, (2) reevaluate policy regarding compensatory mitigation, and (3) reevaluate the 2019 Greater Safe Grouse Resource Management Plan by early November.

In June 2021, DOI announced it would be revising several of the Trump administration rules pertaining to the Endangered Species Act. Below are the latest updates:

- On July 9, 2021, FWS submitted a proposed rule to OMB for review. The rule is expected to rescind the December 18, 2020, regulations that revised the FWS process for considering exclusions from critical habitat designations under section 4(b)(2) and propose to revert back to the joint 2016 FWS/NMFS regulations at 50 CFR 424.19.
- On Jun 30, 2021, FWS/NOAA submitted a joint proposed rule to OMB for review. The rule is expected to rescind the regulatory definition of "habitat" for the purposes of critical habitat designations ([85 FR 81411; December 16, 2020](#)). FWS stated a definition is not required to designate critical habitat in compliance with a 2018 SCOTUS decision.
- Revise regulations ([84 FR 45020; August 27, 2019](#)) for listing species and designating critical habitat to reinstate prior language affirming that listing determinations are made "without reference to possible economic or other impacts of such determination."
- Revise regulations for interagency cooperation ([84 FR 44976; August 27, 2019](#)) governing section 7 consultation and "effects of the action."
- Reinstate the "blanket 4(d) rule," which was withdrawn by the previous Administration ([84 FR 44753; August 27, 2019](#)) and establish the default of automatically extending protections provided to endangered species to those listed as threatened, unless the FWS adopts a species-specific 4(d) rule.

Please contact Redacted - PII
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Electric Sector Supply Chain Activities

On January 20, 2021, one of President Biden's first [executive orders](#) (EOs) suspended for ninety (90) days the effectiveness of the Trump Administration's May 1, 2020, [executive order](#) which

sought to limit the suppliers of electric grid equipment and prohibit the purchase and use of such equipment from countries deemed adversarial to domestic grid security (the “BPS EO”). Following this suspension, we received direct confirmation from the Department of Energy (DOE) that the suspension also applied to the [Prohibition Order](#) that DOE issued on December 17, 2020. The Prohibition Order sought to specifically ban numerous categories of equipment, firmware, and software at or within bulk power system facilities that serve or support critical defense facilities. However, subsequent FAQ guidance from DOE, as well as inquiries from supply chain customers, made unclear the applicability and enforceability of the Prohibition Order. In the wake of this confusion, and amongst less formal outreach, the Chamber on March 1, 2021, submitted a [letter](#) to Secretary of Energy Granholm and key White House officials requesting that DOE undertake meaningful outreach with bulk power system supply chain stakeholders before DOE determines its next steps. This letter leveraged some of the points we previously filed with DOE in [comments](#) responsive to the Request for Information DOE issued in response to the BPS EO.

On April 20, 2021, DOE [announced](#) its “100-Day Sprint” on bulk power system cybersecurity. This effort is focused on encouraging grid owners and operators to implement measures or technology (including Neighborhood Keeper) that enhances the detection, mitigation, and forensic capabilities on their systems. Accompanying this initiative, DOE issued a [revocation](#) of the December Prohibition Order, and also issued a [new Request for Information](#) (the “2021 RFI”) seeking additional stakeholder input in advance of additional activities by DOE directed at securing the bulk power system supply chain. The Chamber has held multiple conversations with high-level DOE personnel in the wake of these actions, and worked extensively with its Bulk Power System Supply Chain Working Group to develop responsive [comments](#) to DOE’s 2021 RFI that were submitted on June 7, 2021. On August 25, 2021, the President and White House national security personnel met with various energy industry CEOs to discuss critical infrastructure resilience and associated cybersecurity concerns. As of early September, the Chamber received confirmation that DOE was still formulating its future plans in this space. The Chamber is also collaborating with the Edison Electric Institute and the North American Transmission Forum on the development of a single repository or library to streamline the analysis and implementation of potential future supply chain restrictions.

On a separate track, the Federal Energy Regulatory Commission (FERC) on September 17, 2020, issued its own [Notice of Inquiry](#) (NOI) targeting potential risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security. In collaboration with its members, the Chamber submitted [comments](#) responsive to FERC’s NOI on November 23, 2020. Further action by FERC responsive to the NOI is anticipated.

Please contact Redacted - PII **with any questions on electric sector supply chain activities.**

Executive Order on America’s Supply Chains

On February 24, 2021, President Biden issued [Executive Order 14017](#), “America’s Supply Chains.” This executive order directs an immediate 100-day review across federal agencies to

address vulnerabilities in the supply chains of four key product areas: pharmaceuticals and active pharmaceutical ingredients; critical minerals, including rare earths; semiconductors and advanced packaging; and large capacity batteries, such as those used in electric vehicles. In addition, the order calls for a more in-depth one-year review of a broader set of U.S. supply chain sectors focusing on: the energy sector industrial base; the information and communications technology (ICT) industrial base; the transportation industrial base; the defense industrial base; the public health and biological preparedness industrial base; and the supply chains for agricultural commodities and food production. The Chamber has established a cross-sectoral internal working group to coordinate the Chamber's collection of information and analysis, as well as to formulate the Chamber's advocacy, regarding this far-reaching executive order. On April 14, 2021, the Chamber submitted [comments](#) responsive to the Department of Energy's March 23, 2021, [Request for Information](#) regarding risks in the high-capacity battery supply chain, including as it relates to batteries for electric vehicles, data centers and telecommunications, and consumer devices. On April 28, 2021, the Chamber provided [comments](#) in response to the U.S. Department of Defense's [request for input](#) regarding risks in the supply chain for strategic and critical materials, and also joined [comments](#) submitted by the Council of Defense and Space Industry Associations addressing the same topic.

On June 8, 2021, the Administration issued a report entitled "[Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth](#)" that concludes the 100-day review. A [fact sheet](#) was also released. The report proposes a significant number of actions as part of a "whole of government" approach to strengthen the resilience of the supply chains for these four industries, including interagency task forces, new trade actions, and legislation that would support increased domestic production, invest in new production and processing of critical minerals, combat unfair trade practices, and strengthen reliance on key U.S. allies. This report was accompanied by a DOE-led National Blueprint for Lithium Batteries that details a number of specific steps the Administration plans to take to address concerns regarding sourcing and manufacturing related to electric vehicles. The Chamber is reviewing the recommendations in these reports and welcomes member input as we move forward.

Please contact

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with any questions.

Energy Innovation Legislation

In late December, the Energy Act of 2020 was included in omnibus appropriations legislation that was signed into law just before adjournment of the 116th Congress. Passage of the legislation completed work on one of the Chamber's top legislative priorities in 2020. The Chamber worked closely with members of Congress and key committee staff on both sides of the aisle to craft and mobilize support for the bill and the dozens of individual pieces of legislation that were included in it. In response, Marty Durbin issued a [statement](#) noting that successful passage of the Energy Act proves "there is common ground on which all sides of the debate can come together to begin to address climate change, promote American technological leadership, and foster continued economic growth." As significant infrastructure legislation

takes form, the Chamber is working to ensure the individual programs and activities authorized by the Energy Act are fully funded through the related budgeting and appropriations process.

On July 16, the House Appropriations Committee passed the Energy and Water Appropriations legislation for fiscal year 2022 and included strong funding levels for most key Energy Act of 2020 programs. More recently, the Chamber has strongly advocated for the passage by Congress of the Bipartisan Infrastructure Investment and Jobs Act, which would provide over \$35 billion across five years in new funding for core climate and energy technology programs. Please reference our recent [Above the Fold blog](#) for additional details on why the bipartisan infrastructure package supports energy innovation and significant climate action. A vote by the House of Representatives on this Senate-passed package is anticipated by September 27, 2021.

Please contact [Redacted - PII]
[Redacted - PII] **with questions.**

EPA MATS Rule

On April 16, 2020, the EPA issued its [final rule](#) modifying the Mercury and Air Toxics (MATS) regulations applicable to Coal- and Oil-fired electric generating facilities under Section 112 of the Clean Air Act. Previously, the Chamber joined a number of trade associations, including the Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association, the International Brotherhood of Electrical Workers, and others to comment on and identify the potential problems and future complexities associated with the EPA's proposal to eliminate the "appropriate and necessary" finding underlying the emissions standards that have now been implemented across the impacted generating units.

Unfortunately, the MATS final rule stayed its course by removing the "appropriate and necessary" finding, while retaining the compliance obligations therein. On January 20, 2021, an early Biden Administration [Executive Order](#) committed to review a significant number of EPA rules and regulations, including the MATS final rule published on May 22, 2020. While lawsuits are also pending on this rule, we anticipate that the Biden Administration's review of this rule could moot some of that litigation through the reinstatement of the "appropriate and necessary" finding noted above. In addition, it is anticipated that EPA's forthcoming revisions to the MATS rule could seek comment on a potential reassessment of the accompanying Residual Risk and Technology Review. On September 7, 2021, the Chamber participated with other interested trade associations and groups in an E.O. 12866 meeting on this rule, which is currently undergoing White House review..

Please contact [Redacted - PII] **with any questions.**

FERC Transmission Reform Rulemaking

At its July 15, 2021 open meeting, the Federal Energy Regulatory Commission (FERC) initiated a rulemaking proceeding to reconsider the Commission's transmission planning, associated cost allocation, and generator interconnection processes. This monumental undertaking was launched with the issuance of an advance notice of proposed rulemaking (ANOPR) entitled ["Building for the Future Through Electric Regional Transmission Planning and Cost Allocation"](#)

[and Generator Interconnection](#).” Among other things, the ANOPR asks how transmission planning should consider future scenarios, whether transmission providers should establish a process to identify geographic zones that have the potential for the development of large amounts of renewable generation, whether reforms are needed to improve the coordination between the regional transmission planning and cost allocation and generator interconnection processes; how to appropriately identify and allocate the costs of new transmission facilities, and whether participant funding of interconnection-related network upgrades may be proven to be unjust and unreasonable. The ANOPR also seeks comment regarding whether the current approach to oversight of transmission investment adequately protects customers. Following the Commission’s recent rejection of an extension to the initially-established comment period, initial comments responsive to the ANOPR remain due on October 12, 2021. FERC did, however, extend the deadline for reply comments to November 30, 2021. The Chamber welcomes input from its members on the content of the initial higher-level comments that it plans to submit in this proceeding.

Please contact Redacted - PII ***with any questions.***

FERC Pipeline Certification Regulations

On April 19, 2018, FERC issued a [Notice of Inquiry](#) (NOI) initiating a review of its 1999 interstate natural gas Certificate Policy Statement, which the Commission utilizes to guide its evaluation of natural gas pipeline infrastructure projects. The Global Energy Institute submitted [comments](#) responsive to this NOI on July 25, 2018. On February 18, 2021, FERC issued a [revised NOI](#) in the same docket (PL18-1-000), reiterating a number of the questions posed in 2018 while adding a number of new and revised questions and an additional broad area of inquiry, which is focused on FERC’s consideration of the effects of its pipeline certification process on environmental justice communities. FERC’s aim with the issuance is to “refresh the record and provide updated information and additional viewpoints to help the Commission assess its policy.” On May 26, 2021, the Chamber submitted [comments](#) responsive to this revised NOI. Commission action responsive to the submitted comments is anticipated sometime after the anticipated confirmation and swearing-in of D.C. Public Service Commission Chairman Willie Phillips as FERC’s 5th Commissioner later this year.

Please contact Redacted - PII ***with any questions.***

FERC PURPA Reform

On December 3, 2019, the Chamber submitted comments, inclusive of multi-industry member input, generally supportive of a Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (FERC) that proposed revisions to the regulations that FERC utilizes to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). At its July 17, 2020, open meeting, FERC finalized this rulemaking by adopting these changes to provide greater flexibility to the states in establishing Qualifying Facility energy rates, through the modification of the “one-mile rule” used to determine what constitutes a single facility, and by finalizing a modified reduction from 20 Megawatts to 5 Megawatts of the rebuttable presumption with respect to small power production facilities’ access to wholesale markets, among other things. Concurrent

with FERC's finalization of its modernization of PURPA, the Chamber issued a supportive [statement](#). A handful of requests for rehearing of FERC's final PURPA rule were submitted to FERC on August 17, 2020, predominately from renewable developers and environmental NGOs. These rehearing requests were generally denied by FERC within an order issued on November 19, 2020.

A number of lawsuits challenging FERC's final rule on PURPA were filed and consolidated in the 9th Circuit Court of Appeals. On May 27, 2021, Petitioner Solar Energy Industry Association and Petitioner Montana Environmental Information Center, et al., submitted their opening briefs. Pursuant to a modified briefing schedule issued by the court on June 23, 2021, Intervenorors and amici curiae supporting the Petitioners now have their briefs due on July 23, 2021. FERC's respondent brief will now be due on October 21, 2021, and respondent-intervenor briefs and amicus briefs in support of FERC's PURPA final rule will be due on November 22, 2021. The Chamber anticipates playing a role as an amicus, with industry allies, in defense of PURPA's modernization.

Please contact Redacted - PII *with any questions.*

Migratory Bird Treaty Act

On May 7, 2021, the U.S. Fish and Wildlife Service issued a proposed rule that would rescind the Trump final rule that interpreted the Migratory Bird Treaty Act's ("MBTA") prohibitions on taking only apply to actions directed at migratory birds, their nests, or eggs and do not extend to incidental take of migratory birds. Prior to the May action, the Biden administration issued an extension of the effective date of the Trump rule out to March 8, 2021. The Chamber submitted comments on both the [May 7th](#) and [March](#) notices.

Bald and Golden Eagle Protection Act

In a recent court filing, the U.S. Fish and Wildlife Service indicated that they would issue an advanced notice of proposed rulemaking regarding the eagle incidental take permit system. the permit program requires the private sector to fund conversation measures to offset incidental take from energy operations.

Please contact Redacted - PII
Redacted - PII *with any questions.*

Nationwide Permit Coalition Comments

The Army Corps of Engineers finalized updates to the Nationwide Permit program on January 13, 2021. On January 20, 2021, the Biden administration issued a [regulatory freeze](#) for new and pending rules, including rules published in the *Federal Register* but not yet implemented, to provide the new administration time for review. The Chamber and National Association of Manufacturers led the submission of our [coalition comments](#) to the U.S. Army Corps of Engineer's [revised Nationwide Permits](#) on November 16, 2020. The program is reissued every five years for projects with minimal impact on water resources under section 404 of the Clean Water Act. The purpose of our coalition comments is to express the business community's

broad support for the commonsense NWP program in building modern, resilient infrastructure for our nation.

A [lawsuit](#) was filed in May 2021 against the Corps by the Center for Biological Diversity, Sierra Club, Friends of the Earth, Waterkeeper Alliance, and Montana Environmental Information Center, stating that the Endangered Species Act requires consultation with relevant agencies to complete a NWP.

Please contact [Redacted - PII] *or Christopher Guith*
[Redacted - PII] *with any questions.*

National Environmental Policy Act (NEPA) Coalition

NEPA's permit streamlining provisions are a top regulatory priority for the Chamber. We formed and led the Unlock American Investment coalition to support the regulatory updates to the permitting process with participation from 50 organizations representing broad sectors of the economy—energy, agriculture, forestry, building trades unions, manufacturing, transportation, and others—to highlight the critical need for permitting reform to build the modern, resilient infrastructure for the future.

- 8/10/2021 - As part of the \$1 trillion Bipartisan Infrastructure Bill, the Senate included the One Federal Decision policy provisions that would streamline the NEPA review process. The bill also reauthorizes FAST-41 by removing the 2023 sunset provision and expands coverage to projects sponsored by Tribes.
- 8/2/2021 - The Council on Environmental Quality (CEQ) submitted a proposed rule to the White House for review that is phase 1 of their two step process to revise the 2020 Trump rulemaking. The Chamber led the Unlock American Investment in a coalition meeting with the White House on August 25th supporting the streamlining provisions of the 2020 rule.
- 7/13/2021 – Senators Portman and Sinema introduced the “[Federal Permitting Reform and Jobs Act](#),” which would reauthorize Title 41 of the Fixing America's Surface Transportation Act (FAST-41) of 2015 to help improve the efficiency and coordination of federal permitting decisions for critical infrastructure. The Chamber issued a letter of support and has added the bill to the Leadership list to reward bipartisan efforts.
- 6/21/2021 – The U.S. District Court for the Western District of Virginia dismissed one of the five lawsuits brought by environmental groups challenging a CEQ 2020 rule.
6/29/2021 – [CEQ issues interim final rule](#) moving back by two years the date by which federal agencies are required to propose updates to their NEPA procedures to conform to CEQ's 2020 rule. The Chamber's Unlock American Investment coalition issued a [letter](#) opposing the delay due to the confusion and uncertainty it would create.

Please contact [Redacted - PII] *with any questions.*

Risk Management Plan (RMP) Reconsideration

On June 16th and July 8, 2021, EPA held public listening sessions to give interested parties the opportunity to present information and provide comment on views pertaining to the revisions made to the RMP rule since 2017. The [Chamber gave testimony](#) at the EPA public hearing held on July 8, 2021, supporting the smart regulations that recognize industry progress, promoting

coordination with OSHA, and cautioning against the security risks of requiring the public disclosure of too much information. Section 112(r) of the Clean Air Act Amendments requires EPA to publish regulations and guidance for chemical accident prevention at facilities that use certain hazardous substances. These regulations were updated in 2017 and then in 2019. In the 2019 rule, EPA concluded that a better approach is to improve the performance of a subset of facilities by achieving greater compliance with RMP regulations instead of imposing additional regulatory requirements on the larger population of facilities that is generally performing well in preventing accidental releases. For this and other reasons, EPA rescinded some of the 2017 amendments that were unreasonable or not practicable relating to safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor regulatory changes. In January of this year, the Biden Administration identified the RMP rule as an action for review under Executive Order 13990: Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.

Please contact Redacted - PII **with any questions.**

Light-duty Vehicle Standards

The years-long negotiations between the Federal government, California, and automakers over fuel economy and greenhouse gas (GHG) standards is continuing in the Biden Administration. Since 2019, the Chamber has become more active in engaging in these issues, actively lobbying for middle-ground solutions that deliver steady fuel economy gains, preserve a single national market for auto sales and unite stakeholders.

The Trump Administration finalized rules known as “SAFE 1” (rescinding California’s special Clean Air Act waiver to set standards more stringent than the federal government) and “SAFE 2” (revised passenger vehicle fuel economy standards for model years 2021-2026).

- On May 12, 2021, EPA/DOT issued a proposed rule to fully repeal the “SAFE 1” rulemaking and withdraw the interpretative statements that allow states to adopt CA’s vehicle standards for criteria pollutants, but not its GHG vehicle standards and zero emission vehicle sales mandates.
- On August 10, 2021, EPA proposed increasing the stringency of the “SAFE 2” rulemaking for MY 2023 through 2026 standards by 1.5 percent each year while maintaining the current standards for MYs 2021 and 2022. This would raise the current mpg equivalent from 43 to 52 mpg. Comments on the proposal are due September 27.

The Chamber intends to remain engaged on this issue and seek a middle-ground solutions that are acceptable to its broad membership.

Please contact Redacted - PII **with any questions.**

Affordable Clean Energy Rule Litigation

In June 2019, the Environmental Protection Agency (EPA) [finalized](#) its repeal of the Obama Administration’s Clean Power Plan (CPP) and issued its replacement rule, the Affordable Clean Energy (ACE) Rule. The Chamber led a coalition which submitted [comments](#) supportive of the

repeal of the CPP and the replacement of that controversial rule with the ACE Rule. On August 6, 2019, the Chamber filed with the D.C. Circuit Court of Appeals a [motion to intervene](#) in defense of multiple lawsuits challenging the EPA's CPP withdrawal and concurrent promulgation of the ACE rule. The Chamber's [brief](#), submitted primarily in defense of the EPA's repeal of the CPP, was submitted on July 16, 2020. On October 8, 2020, the Court held oral argument on the merits of the EPA's repeal of the CPP and its promulgation of the ACE Rule.

On January 19, 2021, the U.S. Court of Appeals for the D.C. Circuit issued a 2-1 [opinion](#) vacating the Trump EPA's rules rescinding the CPP and replacing it with the ACE Rule. The majority opinion held that the Clean Air Act does not constrain EPA to "inside the fence" mechanisms to achieve greenhouse gas emissions reductions. The order further rejected the replacement ACE Rule as representing an overly constrained view of the agency's authority. The Court remanded the rulemaking to EPA for the agency to reassess its power plant greenhouse gas regulations. Judges Millett and Pillard (both Obama appointees) supported the full opinion, while Judge Walker (a Trump appointee) wrote a statement concurring in part and dissenting in part.

On February 22, 2021, the D.C. Circuit granted EPA's unopposed motion for a partial stay of issuance of the mandate and requested status reports from EPA at 90-day intervals. On April 29, 2021, a group of states led by West Virginia filed with the U.S. Supreme Court a petition for certiorari of the D.C. Circuit's ACE Rule decision. The North American Coal Corporation filed its own petition for cert. similarly challenging the D.C. Circuit's disposition of the ACE Rule. On August 5, 2021, EPA filed its opposition to the state and industry petitions for cert. of the D.C. Circuit decision overturning the prior administration's repeal and replacement of the Clean Power Plan. A Supreme Court decision on the cert. petitions is anticipated in the Fall. The Chamber continues to monitor these developments.

Please contact Redacted - PII **with any questions.**

First Proposed Chemical Addition to CAA Hazardous List

On June 11, 2021, EPA issued an advanced notice of proposed rulemaking soliciting information regarding the addition of 1-bromopropane (1-BP) to the list of hazardous air pollutants (HAP) covered under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) program established under Section 112 of the Clean Air Act (CAA). The Halogenated Solvents Industry Alliance and New York State Department of Environmental Conservation submitted petitions to add 1-BP as a HAP in 2010 and 2011, respectively, that initiated this process. If EPA were to add 1-BP as a HAP, it would be precedent setting for other chemicals as this would be the first time that a substance would be added since the initial HAP list was established by the 1990 CAA Amendments. In part for this reason, the Chamber participated in [coalition comments](#) pointing out the administrative steps the agency needs to take if it were to add any new chemical and commented on various other provisions including the potential implications for immediate compliance impacts to facilities.

Please contact Redacted - PII **with any questions.**

Read-Ahead for the Environment & Agriculture Issues

CERCLA 108(b) Financial Assurance Proposals

The Chamber submitted coalition [comments](#) to EPA in support of its proposal not to impose additional financial assurance requirements on the electric power generation, transmission, and distribution industry under section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”). This follows the Agency’s decision not to impose such requirements on the hard rock mining industry.

On December 4, EPA issued a similar proposal to set no financial assurance requirements for petroleum and coal products manufacturing industries, and coalition comments supporting this proposal were submitted on February 21, 2020. On May 6, 2020, additional coalition [comments](#) were submitted in support of EPA’s most recent CERCLA rulemaking, which is applicable to the chemical manufacturing industry. On November 24, 2020, EPA finalized these three rulemakings via a singular [order](#) electing not to impose financial responsibility requirements upon the Electric Power Generation, Transmission, and Distribution industry, the Petroleum and Coal Products Manufacturing industry, and the Chemical Manufacturing industry. The Administration did not include this final rule in its non-exhaustive listing of EPA actions to review as part of President Biden’s [Executive Order](#) on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.

Please contact Redacted - PII **with any questions.**

Direct Hydrologic Connection

On April 23, 2020, the U.S. Supreme Court issued its opinion in *Hawaii Wildlife Fund v. County of Maui* addressing the scope of the Clean Water Act’s permitting requirements. At issue was whether the Act “requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” like groundwater. Many in the business community, including the Chamber, contended that the Act’s permitting program applies to discharges directly from a point source to navigable waters, but not most indirect discharges (which are addressed by other statutes and programs).

The Supreme Court held that the Act requires a permit where there is the “functional equivalent to a direct discharge” from a point source to navigable water. Justice Breyer wrote the majority [opinion](#), joined by Justices Roberts, Ginsburg, Sotomayor, Kagan and Kavanaugh. On remand, the Federal District Court in Hawaii issued a July 15, 2021 decision holding that the Hawaiian island of Maui must obtain a Clean Water Act permit for discharges of wastewater that find their way into the ocean, concluding that the injection into underground wells that the county knows will reach the ocean amounts to the equivalency test established by the Supreme Court. Following the County of Maui’s submission on August 19, 2021, of a motion for reconsideration of this decision on remand, the District Court somewhat surprisingly established a briefing schedule and forthcoming oral argument to be held in consideration of the motion for reconsideration on October 12, 2021.

On September 8, 2020, the Chamber submitted an amicus brief in *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, urging the Seventh Circuit to affirm the lower court ruling in that case that constituents discharged into groundwater are governed by RCRA and state law, and not the Clean Water Act. Oral argument in *Prairie Rivers* was held on November 13, 2020. On June 28, 2021, the Seventh Circuit [affirmed dismissal](#) of the association's Clean Water Act citizen suit for lack of jurisdiction, holding that the complaint failed to show that any of the plaintiff's members had standing.

Separately, EPA proposed in December 2020 a guidance document that identifies one additional factor for consideration when evaluating whether and how to perform a "functional equivalent" analysis; specifically the "design and performance of the system or facility from which the pollutant is released." EPA finalized this [guidance](#) on January 14, 2021. While a guidance document such as this does not have the force and effect of law, it is anticipated that the Biden EPA will reevaluate this approach to the "functional equivalent" analysis.

Please contact [Redacted - PII] **with any questions.**

HFC Phasedown Legislation

The Chamber along with our trade association colleagues submitted [comments](#) on the AIM Act Allocation Rule on July 6, 2021 and have several meetings with EPA for updates on their thinking on next steps. The rule is still under review by OMB with expectation for final signature by the end of September 2021. We are also working with our coalition of companies and trades to support Kigali amendment ratification, which critical to the U.S. business community receiving the global trade and enforcement benefits of AIM Act passage.

Please contact [Redacted - PII] **with any questions.**

Marine Debris and Recycling

The Chamber is joining the American Chemistry Council, the National Association of Manufacturers, and other members and trades to develop Save Our Seas 3.0 and other recycling infrastructure and marine debris priorities. There are provisions in the [Bipartisan Infrastructure Framework](#) providing \$75 M for recycling education and \$275 M or \$55 M annually for SOS 2.0 post-consumer management and infrastructure. In addition, EPA is expected to imminently finalize the National Recycling Strategy, which recommits the U.S. to increasing the national recycling rate to 50% by 2030.

Please contact [Redacted - PII] **with any questions.**

Ozone and Particulate Matter NAAQS Review

EPA is required by the Clean Air Act to review the NAAQS standards every five years. EPA last updated the PM2.5 NAAQS in 2012, when the agency lowered the annual primary standard from 15 ug/m3 to 12 ug/m3. The Ozone standards were last tightened in 2015, when the agency lowered the ambient standards from 75 to 70 parts per million. EPA issued their final actions in December 2020 to retain the current NAAQS standards for both ozone and PM.

On August 30, 2021, EPA announced the membership to the Clean Air Scientific Advisory Committee's (CASAC) supplemental particular matter (PM) panel that will focus on the Biden Administration's review of the PM ambient standards. The panel includes 20 from academia, one environmental organization, and one state environmental agency. On June 10th, EPA [announced](#) its plans to reconsider the 2020 PM2.5 NAAQS decision that retained the existing ambient standards. EPA expects to issue a proposed rulemaking in Summer 2022 and a final rule in Spring 2023.

In recent court filings, EPA indicated that they will announce their plans by October 22, 2021, regarding whether they will also reconsider the Ozone NAAQS or allow the litigation to continue challenging the Trump administration's decision to retain the current standards. In response to lawsuits challenging the standards, the Chamber along with other trades have intervened to support their retention.

Please contact Redacted - PII **with any questions.**

PFAS

The Chamber included opposing the PFAS Action Act in our Congressional Scorecard. [The PFAS Action Act](#) passed the House by a vote of 241 to 182 with 23 Republicans joining Democrats in supporting the bill. Key provisions of the bill include:

- Require the EPA to establish a national drinking water standard for PFOA and PFOS within two years that protects public health, including the health of vulnerable subpopulations
- Designate PFOA and PFOS chemicals as hazardous substances within one year and require the EPA to determine whether to list other PFAS within five years
- Designate PFOA and PFOS as hazardous air pollutants within 180 days and require the EPA to determine whether to list other PFAS within five years
- Require the EPA to place discharge limits on industrial releases of PFAS from ten sectors and provide \$200 million annually to upgrade water infrastructure
- Prohibit incineration of PFAS wastes and place a moratorium on the introduction of new PFAS into commerce
- Require comprehensive PFAS health testing
- Create a voluntary label for PFAS in cookware and other products

The National Defense Authorization Act for FY22 is expected the House floor this week with several concerning provisions such as providing a temporary ban on incineration especially for AFFF firefighting foam and precluding the DoD procurement of many products containing PFAS. There is also language calling DoD to follow any stricter state clean-up standards. The coalition provided [comments](#) in response to EPA's interim guidance and PFAS waste disposal and destruction. The guidance was prepared in response to an amendment to the FY2020 National Defense Authorization Act that requires development and update every three years. We also submitted comments on EPA unregulated contaminant water monitoring rule, which includes 29 PFAS.

There are also several imminent regulatory opportunities to weigh in:

- Any suggestions on possible submissions for [experts to help with IRIS reviews](#) of PFAS? The submission is due on September 22, 2021.
- Your priorities for [the PFAS TSCA recordkeeping a reporting rule](#). I would like to build on our extension request comments attached. Comments are due on September 27, 2021. I would like to have a draft together by early next week.
- Should we weigh in on the [draft of the first EPA-validated laboratory analytical method](#) PFAS in eight different environmental media, including wastewater, surface water, groundwater, and soils?
- EPA also released a wastewater [effluent guideline plan](#) for several sectors, including chemicals, plastics and synthetic fibers and metal finishing.

Please contact [Redacted - PII]
[Redacted - PII] **with any questions or to get involved.**

Resilience

The Chamber drafted a [blog](#) of policy suggestions on resilience for collaboration between Congress and the administration. The Chamber convened a workshop between the Council on Infrastructure Financing Authorities and state emergency managers to share experiences on implementing the Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act. We followed up with a [coalition letter](#) to FEMA highlighting several recommendations for STORM Act implementation. There are numerous resilience provisions in the Bipartisan Infrastructure Framework, including appropriations \$1 billion for the Building Resilient Infrastructure and Communities program and \$500 million for the STORM Act.

Please contact [Redacted - PII] **with any questions.**

TSCA

EPA announced via a press release on June 20, [2021](#) that it will be changing some aspects of TSCA Risk Evaluations by ensuring that environmental justice and frontline community exposure are considered. EPA will also reexamine some of the completed risk evaluations for the first ten chemicals to determine what exposure pathways may not have been considered before.

Please contact [Redacted - PII] **with any questions.**

Stormwater Innovation Principles

The Chamber is providing comments to the House Committee on Transportation and Infrastructure on the reauthorization of the Clean Water State Revolving Funds including grant programs on stormwater reuse issues. We are hosting a discussion with EPA and our coalition regarding the potential for more flexible, offsite compliance measures slated for the week of July 26, 2021.

Please contact [Redacted - PII] **with any questions.**

Water Infrastructure and Policy Priorities

The Chamber included passage of [S. 914, Water and Wastewater Infrastructure Act in our Congressional Scorecard](#). The legislation included unprecedented authorization levels in for drinking water and clean water SRF programs. The bill passed the Senate by a broad bipartisan vote of 89 to 2. The Bipartisan Infrastructure Framework included much of this language as well as \$55 billion in appropriations (\$15 billion for lead service lines and \$10 billion for PFAS). Here are our [2021 water policy priorities](#) for your consideration.

Please contact Redacted - PII *with any questions.*

Waters of the United States

The U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers published a final [rule](#) to repeal the 2015 rule that defined “Waters of the United States” (“WOTUS”) under the Clean Water Act (“CWA”) and to restore the regulatory text that existed prior to the 2015 Rule. Global Energy Institute President Marty Durbin joined other stakeholders in providing remarks in support of the Agencies’ efforts at the rule’s signing. On January 23, 2020, EPA Administrator Wheeler announced the [final rulemaking](#) that replaced the 2015 regulation with a new definition of Waters of the United States. It was published in the Federal Register on April 21, 2020. Litigation related to both the 2015 rule and the 2020 replacement rule is ongoing. On June 9, 2021, the EPA and the Department of the Army announced their intent to revise the definition of WOTUS, stating that such revised definition will better protect our nation’s water resources. Concurrently, the Department of Justice filed a motion to remand pending litigation on WOTUS. More recently, the Chamber submitted a request to extend the comment period and joined the Water Advocacy Coalition comments urging the agency to retain several commonsense principles of the Navigable Waters Protection Rule. At the same, a court decision in Arizona vacated the NWPR, so EPA and the USACE have indicated their intention enforce the pre-2015 definitions until they proceed with a rulemaking to replace them.

Please contact Redacted - PII *with any questions.*

EPA Cost-Benefit Analysis

On December 9, 2020, EPA finalized a rule that would reform the process under which the agency develops and evaluates the benefits and costs of Clean Air Act regulations. As part of an industry trade association coalition, the Chamber has been extensively engaged in supporting this rulemaking and emphasizing the importance of transparency and consistency in developing the agency’s cost-benefit analyses for rulemakings. Earlier in this process, the Chamber issued a statement, presented [testimony](#) at the agency’s public hearing on the rule, launched an advocacy [webpage](#), and submitted [coalition comments](#) in conjunction with several other trades.

On May 13th, EPA [proposed](#) an interim final rule rescinding the 2020 BCA rulemaking. The Chamber filed comments in opposition to this decision [individually](#) and as [part of a coalition](#).

Please contact

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with any questions.

Chemistry Solutions Working Group

The Chamber has launched a Chemistry Solutions Working Group to convene all aspects of the chemical supply chain and we welcome you to join us. This group is open to all across the Chamber membership and are working to be proactive on issues facing the chemical industry and the entire supply chain.

PIP 3:1

The EPA announced on Sept. 3 that it had signed an interim rule extending the Sept. 4, 2022, deadline for its TSCA rule governing phenol, isopropylated phosphate (3:1) or PIP (3:1) to March 8, 2022. EPA's move averts a blanket ban that was scheduled to take effect Sept. 4, when a "no-action" enforcement assurance issued on March 8 was due to expire. The PIP rule was originally slated to take effect then, but industry warned that dropping it from the supply chain that quickly would require shutting down vast swaths of the manufacturing sector. The Sept. 3 announcement acknowledges those claims, saying "EPA is extending certain compliance dates for PIP (3:1) to March 8, 2022, to address the hardships inadvertently created by the original applicable compliance dates in the January 2021 final rule to ensure that supply chains are not disrupted for key consumer and commercial goods." EPA says it will consider further extensions only if industry submits requests supported by "specific" information on a host of subjects related to the chemical.

Please contact

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with any questions.