

EPA and State Regulators Outline Region 7 Regulatory Priorities at Environmental Conferences

Alert

10.06.2023

By Brittany Barrientos, Kristen Ellis Johnson, Betsy Smith, Sarah Lintecum Struby and Claire Williams

Stinson's environmental attorneys have been attending and presenting at environmental conferences across the country, which included presentations from Environmental Protection Agency (EPA), state regulators, and industry leaders. We want to share themes our team has learned about state and federal priorities:

- **Compliance with the PM_{2.5} Standard:** EPA proposed lowering the PM_{2.5} standard earlier this year. State agency representatives confirmed that areas in each Region 7 state could struggle to comply with the reduced standard, depending on the level ultimately set. The proposed standard will impact future development and permitting, beginning 60 days after the final standard is published, when air quality impacts are evaluated against the new NAAQS. [Brittany Barrientos](#) recently spoke on a panel discussing EPA's revised NAAQS standards and state implementation.
- **PFAS:** EPA is rolling out many new PFAS regulations, and proving where PFAS contamination came from will pose challenges for facilities. EPA is enforcing existing PFAS regulations, including, in rare instances, through its imminent and substantial endangerment authority. Regulations under RCRA, CERCLA, the CAA, CWA and SDWA have been issued or are on the horizon. In parallel, laboratories are struggling to keep up with demand, procuring new equipment, and meeting increasingly low requirements. In addition, with the new and proposed regulations, facilities are also grappling with employee safety considerations given the evolving science. [Sarah Struby](#) co-chairs Stinson's PFAS Task Force.
- **Environmental Justice:** Facilities located in environmental justice communities will be enforcement priorities for the EPA. EPA regions, including EPA Region 7, are exceeding their goals for number of inspections conducted in overburdened communities, and will continue focusing on EJ areas that align

EPA and State Regulators Outline Region 7 Regulatory Priorities at Environmental Conferences

with other national or regional enforcement and compliance initiatives. If you have not run EJ Screen to understand community demographics, you should do so.

- **Inspections:** EPA Region 7 recently hired ten more inspectors, so unplanned inspections will continue to increase. At the same time, EPA continues to use other tools, such as desktop inspections and information requests to evaluate compliance.
- **Due Diligence:** The new ASTM standard addresses emerging contaminants and designates them as a non-scope item. If proposed changes to include PFAS as CERCLA "hazardous substances" become effective, PFAS would then be designated as a Phase I scope item. [Kyle Foote](#) recently spoke about addressing PFAS during the due diligence process.
- **Good Neighbor Plan:** The Good Neighbor Plan, which became effective August 4, 2023, sets limits on NOx pollution from electric generating units for 23 states in nonattainment or in interference with maintenance of the 2015 ozone NAAQS. Beginning in 2026, EPA is setting enforceable NOx emissions standards for industrial sources, which include reciprocating internal combustion engines, kilns, reheat furnaces, furnaces, boilers, combustors and incinerators. EPA may grant compliance extensions, but they could be difficult to receive.
- **Extreme Weather Events:** As wildfires become more common across the country and this region, regulators are struggling to determine how (and whether) to address them as "exceptional" events. EPA has not issued guidance for the 2023 wildfires, which have resulted in significant NAAQS exceedances throughout Region 7 states that could have major ramifications for attainment designations moving forward. In addition to the NAAQS, wildfires and other extreme weather events must be a consideration for facilities given EPA's focus on emergency planning and environmental justice, and should be considered as part of facilities' overall planning.
- **Coal Ash:** While the CCR rules were issued in 2015 as a self-implementing regime, EPA has enforcement authority under the WIN Act and is prioritizing Coal Combustion Residual enforcement. This started with review of public websites, but has now moved to evaluation of facility determinations (such as the adequacy of the groundwater evaluations, determinations about the source of identified constituents, and the determination of how to address any contamination). The CCR rules are a cleanup regime, and most enforcement is expected to center around corrective action. In parallel, EPA's legacy rule remains the elephant in the room.
- **Lead:** Be prepared for additional attention on lead issues. EPA proposed new rules this summer to address lead dust, and the EPA Region 7 representatives described lead as an issue that is keeping her up at night.
- **Recent Case Law:** We are anticipating major changes to agency authority. SCOTUS granted certiorari in *Loper Bright Enterprises v. Raimondo*, which could uproot the *Chevron* doctrine and cause courts to give less discretion to agency decisions. Also, the Major Questions doctrine, embraced by SCOTUS in *West*

EPA and State Regulators Outline Region 7 Regulatory Priorities at Environmental Conferences

Virginia v. EPA, is predicted to continue to impact environmental regulations by checking agency authority. [Aimee Davenport](#) recently led a panel discussion about the numerous case law changes impacting facilities in the current environmental law landscape.

For more information on the region 7 regulatory priorities, please contact [Brittany Barrientos](#), [Aimee Davenport](#), [Andy Davis](#), [Kyle Foote](#), [Kristen Ellis Johnson](#), [Betsy Smith](#), [Sarah Lintecum Struby](#), [Claire Williams](#) or the Stinson LLP contact with whom you regularly work.

CONTACTS

Brittany Barrientos

Kristen Ellis Johnson

Betsy C. Smith

Sarah Lintecum Struby

Claire M. Williams

RELATED CAPABILITIES

Environmental & Natural Resources

STINSON

STINSON LLP \ STINSON.COM