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EPA Plans New Air Toxics Strategy with a Focus on Environmental Justice

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The U.S. Environmental Protection Agency (EPA) Office of Air Quality Planning and Standards (OAQPS) plans to release a new air toxics strategy that it purports will represent a paradigm shift that incorporates a new structure and a new focus on environmental justice (EJ), a priority in the Biden Administration.

The four key components of the revitalized air toxics program, as published in a forward- facing EPA website release on April, 2021, are to identify and prioritize air toxics issues, including existing, emerging, and future threats; provide data analytics on air toxics emissions; manage and mitigate air toxics emissions; and increase outreach and implementation of OAQPS's air toxics mission by involving other EPA offices such as EPA transportation and regional offices, and state and tribal air regulators.

OAQPS regulates air toxics emissions as hazardous air pollutants (HAPs) under Section 112 of the Clean Air Act through the National Emission Standards for Hazardous Air Pollutants (NESHAPS) for major point sources of air emissions. In addition to the traditional criteria pollutants regulated by EPA (i.e., ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead) Congress in 1990 specified certain chemicals to be regulated as HAPs, which now number 187 substances (e.g., benzene, formaldehyde, hexane, naphthalene, and numerous others). Major sources of HAP emissions are regulated with technology-based standards that require the Maximum Achievable Control Technology (MACT). Smaller "area sources" are also regulated as a part of EPA's urban air toxics program.

While there have been significant reductions in air toxics emissions nationally, EPA recognizes that many air toxics issues are localized and may disproportionately affect communities of color, low-income communities, and indigenous communities.

Along with the publication of a plan to develop a new strategy, several recent actions by EPA demonstrate its renewed commitment to advancing these initiatives. For instance, on the managing and mitigating air toxics emissions initiative, EPA telegraphed a change of plans with regard to the CAA requirement to develop risk and technology review (RTR) rules related to existing air toxics regulations for certain source categories. Under Section 112 CAA, EPA is required to periodically review existing sector-based rules and determine whether new information regarding advances in emission control techniques or new information regarding public health risks is available such that a tightening of an industry sector's HAP emission limitations is justified. In litigation with the Sierra Club before the U.S. Court of Appeals for the District of Columbia Circuit, EPA recently signaled that it may be willing to consider new emission standards for some additional HAPs in certain industrial sectors that were not regulated in the original adoption of the HAP rules for that industrial class. This approach probably will first apply to lime manufacturing facilities, but other sectors are under consideration, including rubber tire manufacturing, miscellaneous coating of parts, plywood and composite wood products manufacturing, and taconite iron ore processing.

Likewise, on the data analytics initiative of the draft policy, EPA recently announced that it will begin publishing annual reports with regard to HAP emissions, outdoor air quality concentrations, and national screening risk estimates for air toxics. Currently, the only available information relates to out-of-date 2014 data. Previously,

the data was released only once every four years, so that the 2017 data is scheduled to be released in late 2021. However, EPA Administrator Michael Regan announced in late June 2021 that, rather than releasing the data once every four years, as data becomes available, it will be released on an annual schedule in the future. The annual release of the information will enable the agency's data to be utilized in EPA's new EJ screening tool, EJSCREEN.

For more information, please contact Wayne Cropp, or any member of Baker Donelson's Environmental team.