

February 18, 2014

Climate, Energy, & Air Update
Weeks of January 30 – February 12, 2014

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DOE approves export authorization for Sempra's Cameron LNG plant . . . White House assembles climate team . . . President Obama will push Congress to approve \$ 1 billion climate resilience fund . . . Cooling Water Intake Rule is caught, then released until April . . . State Department issues final supplemental EIS for Keystone XL . . . EPA insists that EPA Act 2005 does not scramble the agency's proposed CO2 emission standards for new power plants . . . Senators want more data on implications of lifting crude oil export ban . . . EPA agrees to issue final coal ash rule by December . . . President signs farm bill . . . Interior moves forward on off-shore wind project . . . Doc Hastings, Chair of House Natural Resources Committee, will not seek re-election.

Executive Branch

- **DOE Approves Export from Cameron LNG Facility.** The Department of Energy, which has responsibility for authorizing the import and export of natural gas, conditionally approved export of liquefied natural gas (LNG) from the Sempra Energy-owned Cameron LNG export terminal in Cameron Parish, Louisiana. DOE's export license approval is conditional on approval by the Federal Energy Regulatory Commission (FERC), which has responsibility for approving liquefaction and LNG terminal construction and operations, among other conditions. FERC's decision is expected by July 29, 2014, after the April 30 release of its final environmental impact statement (EIS) for the facility. DOE's approval decision is available at <http://energy.gov/sites/prod/files/2014/02/f7/ord3391.pdf>. For a more in-depth analysis of the natural gas export process, see the March 22, 2013 VNF Alert at <http://www.vnf.com/1104>.
- **DOE Announces New Solar Manufacturing Funding.** As part of its SunShot Initiative, DOE announced \$25 million in additional funding for domestic solar manufacturing in an effort to lower the cost of solar electricity. The SunShot initiative is aimed at reducing the cost of solar PV and Concentrating Solar Power (CSP) so that it is cost-competitive with other electricity sources. Concept paper submission is due by March 12, 2014, and a full application is due by April 30,

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2014. For more information, see DOE's announcement at <https://eere-exchange.energy.gov/Default.aspx?Search=DE-FOA-0001018&SearchType>.

- **EPA Reschedules Cooling Water Intake Rule Deadline.** EPA and the environmental group Riverkeeper have agreed to extend the Agency's deadline for finalizing the highly-anticipated final cooling water intake rule to April 17. This rule, promulgated under Section 316(b) of the Clean Water Act (CWA), would set standards for hundreds of power plants and industrial facilities that have cooling water intake structures to limit impacts on fish and other aquatic life. This is the fifth extension since a 2010 settlement agreement with Riverkeeper committed the agency to issue a final rule by July 27, 2012; however, EPA stated in its court filing regarding the extension that it does not intend to seek further extension beyond April 17.
- **EPA Issues Diesel Fracking Guidance.** EPA issued guidance on February 11, 2014, seeking to clarify how companies that use diesel fuel as part of their fracking operations can comply with Safe Drinking Water Act (SDWA) permitting regulations. Diesel fuel is the only injection liquid not exempted from SDWA requirements by the Energy Policy Act of 2005, but only a small percent of fracking wells use the fuel. However, EPA stated that it hopes this guidance can serve as a model for state and tribal regulation of fracking fluids. The guidance recommends baseline water testing of pre-fracked wells, mechanical integrity tests to ensure no well leaks contaminate water supplies, and sealing of wells with cement at a level deeper than potential water sources. The guidance is available at <http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/upload/epa816r14001.pdf>.
- **NIST Releases Cybersecurity Framework.** The National Institute of Standards and Technology (NIST) released its final Cybersecurity Framework on February 12, one year after President Obama issued an Executive Order calling for its development. The framework is voluntary, and outlines a series of steps aimed at helping both large and small organizations develop a risk-based approach to improving cybersecurity. The final framework is focused on critical infrastructure sectors such as energy, and is similar to the preliminary framework released in October, 2013. The framework is available at <http://nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf>.
- **Department of State Issues Long-Awaited Final Supplemental Environmental Impact Statement for Proposed Keystone XL Pipeline.** On January 31, the U.S. Department of State released its Final Supplemental Environmental Impact Statement (FSEIS) for the Keystone XL Pipeline Project. The FSEIS concluded (as did the March 2013 Draft Supplemental EIS) that, "the proposed Project is unlikely to significantly affect the rate of extraction in oil sands areas," and therefore is not likely to have a material impact on greenhouse gas emissions (GHG) compared to alternatives. Public comment on the FSEIS is open for 30 days. The FSEIS is available at <http://keystonepipeline-xl.state.gov/finalseis/index.htm>. For a more in-depth analysis, see the VNF February 5 Alert at <http://www.vnf.com/2177>.

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- **EPA Preliminary Staff Analysis Recommends Tighter Ozone Standards.** In an assessment made public on February 3, EPA staff made a preliminary recommendation that the primary National Ambient Air Quality Standard (NAAQS) for ground-level ozone be reduced to a level within the range of 0.060 to 0.070 parts per million (ppm). The current 8-hour ozone NAAQS was promulgated in 2008 and is set at a level of 0.075 ppm. The recommendation will go to the Clean Air Scientific Advisory Committee (CASAC) for further review. The CASAC previously has made similar recommendations. In 2013, a group of environmental groups and states sued the EPA for violating a requirement under the Clean Air Act to review, and as necessary, revise the NAAQS every five years. The assessment is available at: <http://www.epa.gov/ttn/naaqs/standards/ozone/data/20140131pa.pdf>.
- **EPA Seeks Comment on Economy-Wide Economic Analysis for Air Regulations.** EPA has published a notice that it is seeking comment on an “analytic blueprint” to inform a Science Advisory Board (SAB) review of the merits of using economy-wide analyses of the costs and benefits of new air regulations (“general equilibrium analysis”). This review fulfills a commitment the Agency made to Sen. David Vitter (R-LA) at the confirmation hearing of EPA Administrator Gina McCarthy. Currently, to determine costs and benefits of a rule, EPA uses engineering analyses and partial-equilibrium analysis – economic modeling that is limited to estimating impacts on the particular regulated sector. Some have argued that EPA should instead use certain tools, such as general equilibrium models, that attempt to capture the interaction and feedback effects among all sectors of the economy when regulations are imposed on one sector. Critics argue that such economy-wide analytical techniques are technically challenging, subject to significant error, and provide little additional information. EPA therefore is requesting review by the SAB and is currently accepting public comment on the specific proposal and review questions that will be submitted for review. EPA’s notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2014-02-05/pdf/2014-02471.pdf>.
- **EPA Releases Position that EAct 2005 Does Not Negate Recently Proposed CO₂ Emission Standards for New Power Plants.** On February 5, EPA published a notice of data availability (NODA) and separate technical support document (TSD) formally stating and supporting its rejection of the claim that certain provisions of the Energy Policy Act of 2005 (EAct 2005) negate the Agency’s determination that carbon capture and sequestration (CCS) technology has been “adequately demonstrated” for the purpose of setting new source performance standards for CO₂ emissions from new power plants under section 111 of the Clean Air Act. Opponents of EPA’s September 2013 proposed rule have argued that EPA’s section 111 proposal impermissibly relied on certain CCS projects that have received government funding under EAct 2005 in making the case that CCS is “adequately demonstrated” for purposes of establishing emission standards. In its NODA, EPA asserts that EAct 2005 only precludes the agency from relying exclusively on the funded projects to make its case, and that its identification of these projects was only one among a number of factors supporting its determination that CCS is “adequately demonstrated” in the meaning of section 111. EPA has requested public comment on its NODA and TSD, which are available at <http://www2.epa.gov/sites/production/files/2014->

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[01/documents/2013_proposed_cps_for_new_power_plants_noda.pdf](#) and
http://www2.epa.gov/sites/production/files/2014-01/documents/2013_proposed_cps_for_new_power_plants_tsd.pdf.

- **In Personnel News.** Michael J. Boots, current chief of staff for the Council on Environmental Quality will take over as acting Chair when current Chair Nancy Sutley steps down on February 18. President Obama has not yet put forward a nomination for a permanent Chair. The White House also announced that Dan Utech, current Special Assistant to the President for Energy and Climate Change will have two deputies at the Domestic Policy Council. Rick Duke will serve as deputy director for climate policy, with a focus on mitigation policies in the President's Climate Action Plan and the intersection of domestic and international climate policy; Ali Zaidi will serve as deputy director for energy policy, with a focus on the production and adoption of alternative fuels and research and deployment of clean energy and energy efficiency. President Obama also announced the nomination of Norman Bay to be the next Federal Energy Regulatory Commission Chairman. Bay is the current director of enforcement at the Commission. The Senate Environment and Public Works Committee voted to send to the Senate floor the nominations of several appointees. See **Legislative Branch** section below.
- **DOE Finalizes Two Appliance Efficiency Regulations.** The Department of Energy finalized two appliance efficiency rules for metal halide lamps – often used as lighting for outdoor facilities such as parking lots, stadiums, and grocery stores – and for external power supplies used in laptops cellphones and game consoles. DOE predicts that together these standards will reduce greenhouse gas emissions by 55 million metric tons and save consumers \$5.1 billion in electric bills over the next 30 years. Additional information on the metal halide lamp standard can be found at http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/16. Additional information on the external power supplies standard can be found at http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/28.
- **EPA Decides Not to Significantly Modify Toxic Emission Standards for Certain Chemical Facilities.** EPA issued a final rule reviewing and slightly modifying national emissions standards for hazardous air pollutants from three chemical manufacturing source categories: group IV polymers and resins, pesticide active ingredient production, and polyether polyols. EPA did not significantly modify the standards limiting emissions of air toxics, but did modify provisions related to startup, shutdown, and maintenance (SSM) and electronic reporting of test results, and imposed certain additional monitoring requirements for all three source categories. The final rule is available at <http://www.epa.gov/ttn/atw/pr4/20140131frprepub.pdf>.
- **EPA Requests Comment on Potential for First Change to Radiation Release Standards in Over 30 Years.** EPA issued an advanced notice of proposed rulemaking and request for comment on a potential update to its standards limiting the release of radiation from nuclear reactors and uranium processing facilities. The original standards, still in place today, were

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issued in 1977. EPA now believes better scientific understanding of radiation biology, changes in technology and disposal practices, and the potential for increased deployment of nuclear power as low carbon electricity generation may justify an update. The notice, open for public comment until June 4, 2014, is available at <http://www.gpo.gov/fdsys/pkg/FR-2014-02-04/pdf/2014-02307.pdf>. A fact sheet on the notice is available at <http://www.epa.gov/radiation/docs/laws/40cfr190/402f12001.pdf>.

- **Interior Moves First West Coast Offshore Wind Project Forward.** The Department of Interior's Bureau of Ocean and Energy Management has moved forward on a proposal from Principle Power Inc. to build a 30-megawatt floating wind farm off the coast of Oregon, the first offshore wind project on the West coast. Interior published a notice in the Federal Register that it had received no competitive interest in the lease other than the proposal from Principle Power, opening the door for a formal project proposal and the issuance of a noncompetitive lease. Principle Power was the recipient of a \$4 million 2012 Department of Energy grant. If the project is ultimately approved, Principle Power would hold the sixth offshore wind lease, and the first using floating turbine technology. Additional information on this project is available from the Department of Interior at <http://www.boem.gov/State-Activities-Oregon/>.
- **EPA Proposes Allowing Texas to Take Over Issuing CO₂ Emission Permits for Major Facilities.** EPA has proposed approval of revisions to Texas's Clean Air Act State Implementation Plan (SIP) that would transfer responsibility for implementing permitting sources of CO₂ emissions under the Prevention of Significant Deterioration (PSD) program from the Agency to the Texas Commission on Environmental Quality. EPA has been implementing the PSD permitting program for Texas under a Federal Implementation Plan since Texas refused to implement the program while challenging the legality of the rule.
- **EPA Agrees to Finalize Coal Ash Rule by December 2014.** On January 29, the EPA, environmental, and business groups filed a proposed settlement agreement requiring the agency to finalize a rule regulating coal combustion residuals (Coal Ash Rule) by December 19, 2014. The EPA released a proposed rule in 2010 outlining two options: regulation of coal ash under the hazardous waste provisions of the Resource Conservation and Recovery Act's (RCRA) Subtitle C or regulation under the nonhazardous waste provisions of RCRA Subtitle D. The proposed settlement agreement is the result of a September 30 decision from the U.S. District Court for the District of Columbia ordering the EPA to develop a timeframe by which to finalize the Coal Ash Rule. For more information, see a VNF CEA Update here: <http://www.vnf.com/1871>.

Legislative Branch

- **House Subcommittee Holds Hearing on Status of CCS Technologies.** On February 11, the House Energy and Commerce Subcommittee on Oversight and Investigations held a hearing entitled "Department of Energy Oversight: Status of Clean Coal Programs." Julio Friedmann, the Department of Energy's Deputy Assistant Secretary for Clean Coal, was the only witness but was accompanied by Scott Klara, the Acting Director for the National Energy Technology

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Laboratory. Committee Members asked about the status of CCS technologies, potential results of technology implementation and barriers to entry. Congressman Joe Barton (R-TX) honed in on the costs related to adding CCS technologies to a power plant. Dr. Friedmann, after providing several caveats, told the Committee that he expects a 70 to 90 dollar cost-per-ton of CO₂ captured for first phase technologies. . He went on to say that he expects that second phase CCS technologies will cost approximately 40 to 50 dollars per ton CO₂ captured. Committee-issued documents, written testimony and a webcast are available at <http://energycommerce.house.gov/hearing/departement-energy-oversight-status-clean-coal-programs>.

- **Markey Gets EPW Slot.** On February 11, Senator Ed Markey (D-MA) was appointed to fill the position vacated by Max Baucus (D-MT) on the Senate Environment and Public Works Committee. Baucus was recently confirmed to be the U.S. Ambassador to China.
- **Murkowski Focuses on Reliability.** On February 11, Senate Energy and Natural Resources Committee Ranking Member Lisa Murkowski (R-AK) released a white paper entitled “Powering the Future: Ensuring that Federal Policy Fully Supports Electric Reliability.” This most recent white paper focuses on the status of the U.S. electric grid and potential challenges that may be ahead. The white paper is available at http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=3c485574-7d19-4ee9-ae0e-c7e8f986032e.
- **Doc Hastings will not Seek Re-election.** On February 13, House Natural Resource Committee Chairman Doc Hastings announced he will not seek reelection.
- **Senate Approves Chair Shuffle.** On February 13, the Senate approved a resolution to appoint three Senators to Chairmanships by unanimous consent. The resolution appoints Senator Mary Landrieu (D-LA) to be Chair of the Senate Energy and Natural Resources Committee; Senator Maria Cantwell (D-WA) to be Chair of the Senate Small Business and Entrepreneurship Committee; and Senator John Tester (D-MT) to be Chair of the Indian Affairs Committee.
- **President Signs Farm Bill.** On February 7, the President signed H.R. 2642, the “Agriculture Act of 2014,” also known as the Farm Bill. This new law reauthorizes laws governing agricultural commodities, various energy programs, research funding, and food assistance. Among other things, P.L. No. 113-79 will consolidate 23 conservation programs into 13 and cut \$6 billion in conservation spending. The law will also provide \$881 million in mandatory funding over the next decade for renewable energy and biofuel initiatives, and will allow renewable chemicals to qualify for assistance under federal biorefinery programs for the first time. The law, however, would strip Agriculture Department funding for installation of special ethanol pumps at gas stations. Additional information is available at <http://www.ag.senate.gov/newsroom/press/release/senate-approves-2014-farm-bill>.
- **Senate Committee Holds Hearing on Performance of NRC Taskforce.** On January 30, the full Senate Environment and Public Works Committee and the Subcommittee on Clean Air and Nuclear Safety held a joint hearing entitled, “Oversight Hearing: Nuclear Regulatory Commission’s (NRC) Implementation of the Fukushima Near-Term Task Force

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Recommendations and other Actions to Enhance and Maintain Nuclear Safety.” The Committee heard from all five NRC commissioners. During questioning, Senators expressed continued frustration with how the NRC is operating under Chairwoman MacFarlane. Committee Chairman Boxer (D-CA) went so far as to announce that she will introduce legislation to “ensure NRC members and their staff are more transparent about their travel schedules” to allow for easier scheduling of additional oversight hearings. A full list of witnesses and webcast of the hearing are available at

http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=84083eb6-df2d-4e86-fdad-591d5a064bed.

- **Senate Committee Holds Hearing on Crude Exports.** On January 30, the Senate Energy and Natural Resources Committee held a hearing entitled “U.S. Crude Oil Exports: Opportunities and Challenges.” According to committee-issued documents, the purpose of the hearing was to “explore opportunities and challenges associated with lifting the ban on U.S. crude oil exports.” In his opening statement, Chairman Ron Wyden (D-OR) said that he generally supports expanded trade, but went on to state that “the fact is energy is not the same thing as blueberries and accordingly it is treated differently under federal law.” He questioned whether lifting the ban on export of crude oil would result in higher gasoline prices for U.S. consumers. A full list of witnesses and webcast of the hearing are available at <http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=4257c751-1911-4467-aaa5-0ff7863777fa>.
- **Waxman Announces Retirement.** On January 30, House Energy and Commerce Committee Ranking Member Henry Waxman announced that he will not run for reelection. Congressman Waxman’s statement is available at <http://waxman.house.gov/press-release/rep-henry-waxman-announces-plans-retire-congress>.
- **Senate Subcommittee Holds Hearing on West Virginia Chemical Spill.** On February 4, the Senate Environment and Public Works Subcommittee on Water and Wildlife held a hearing entitled “Examination of the Safety and Security of Drinking Water Supplies Following the Central West Virginia Drinking Water Crisis.” According to Senators’ opening statements, the intention of the hearing was to investigate the circumstances behind the January leak of about 7,500 gallons of 4-methylcyclohexane methanol, or crude MCHM, into the Elk River, and to review ways to enhance response and prevention in the future. The focus of the witnesses’ testimony varied widely, however, much of the discussion focused on current regulation of the chemical industry and the ways that the proposed Chemical Security Act might affect those regulations. The Subcommittee is expected to consider one or more pieces of legislation to address regulations on chemical spill prevention and spill responses. A full list of witnesses and webcast of the hearing are available at http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=8ccdaff7-cdc6-8a6f-ca6e-a7017498083c/.
- **House Caucus Meets with EPA.** On February 4, the House Sustainable Energy and Environment Caucus (SEEC), met with EPA Administrator Gina McCarthy at the group’s monthly lunch. The chairs of the SEEC are Reps. Steve Israel (D-NY), Gerald Connolly (D-VA) and Paul Tonko (D-NY). At the lunch, the SEEC members discussed climate issues as well as

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policies related to water, energy and the environment. Additional information on the SEEC is available at <http://seec-israel.house.gov/>.

- **Senators Introduce Bill to Change ITC.** On February 6, Senators Michael Bennet (R-CO) and Dean Heller (R-NV) introduced S. 2003, a bill to allow firms to qualify for the Investment Tax Credit (ITC) for solar projects that are under construction before the credit's expiration date. Currently, in order for a project to qualify for the ITC, it must be "placed in service" by December 31, 2016. S 2003 would allow projects to qualify for the ITC when the developer commences construction rather than waiting for the project to come on line. Additional information on the bill is available at <http://www.bennet.senate.gov/newsroom/press/release/bennet-heller-introduce-bill-to-accelerate-solar-energy-development>.
- **Senate Panel Approve Nominees and Bills.** On February 6, the Senate Environment and Public Works Committee held a business meeting to consider several bills and nominations. Included in the list of matters considered by the Committee was the nomination of Ken Kopocis to be the EPA's Assistant Administrator for Water, pending since 2011. Both Kopocis and Rhea Sun Suh, the nominee to be the Department of the Interior Assistant Secretary for Fish and Wildlife and Parks, were approved by the Committee on a party line vote. Three other nominees and all 13 bills considered by the committee were passed by voice vote. The full list of bills and nominees approved by the Committee are available at http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=1a407300-c785-8565-1fcb-70f8296a9e5e.

Judicial Branch

- **Petroleum Refiner Files Lawsuit Against EPA Over 2010 Renewable Fuel Standards Requirements.** Monroe Energy, LLC, a petroleum refiner, filed a lawsuit against the EPA in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) on January 28, arguing that EPA can no longer defend its position that petroleum refiners and importers, rather than petroleum blenders, are obligated to demonstrate compliance with EPA's annual Renewable Fuel Standard (RFS) requirements. *Monroe Energy, LLC v. EPA*, No. 14-1014. EPA's 2010 RFS Rule, 75 Fed. Reg. 14,670 (Mar. 26, 2010), outlines the RFS obligations: including which parties must demonstrate compliance with the Rule. Monroe Energy, LLC asserts that petroleum blenders are in a better position to demonstrate compliance because the blenders produce the finished transportation fuels. Monroe Energy, LLC relies on EPA's 2014 notice of proposed rulemaking (NPRM), and what it believes is a change in the agency's policy, to challenge the 2010 Rule. The 2014 NPRM proposes to set the RFS using a different methodology, which Monroe Energy, LLC argues will unduly burden a subset of refiners and importers from demonstrating compliance – particularly those that do not have any blending capabilities.
- **Ohio Air National Guard Withdraws Wind Turbine Project.** On January 29, the Ohio Air National Guard decided not to build a wind turbine project along Lake Erie after receiving a notice of intent (NOI) to sue from local environmental groups. The environmentalists were concerned that the project would adversely affect migratory birds. The NOI alleged that the project's environmental review process violated the Endangered Species Act, the Migratory

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Bird Treaty Act, the Bald and Golden Eagle Act, and the National Environmental Policy Act. The Air National Guard originally found that the project would have no significant impact on the environment; this finding prompted the environmental groups to issue the NOI. The Air National Guard has reserved its right to review the project at a later date.

- **Ninth Circuit Denies Rehearing Request in GHG Case.** On February 3, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) denied environmental petitioners' request to rehear a citizen suit brought under the Clean Air Act. *Washington Environmental Council v. Bellon*, No. 12-35323. In October, the Ninth Circuit found that the petitioners did not have standing to challenge Washington State Department of Ecology's "reasonably available control technology" standards for greenhouse gas (GHGs) emitted by the state's five oil refineries. The environmental groups had sought to compel the state of Washington and other regional agencies to regulate GHGs emissions from the oil refineries. The Ninth Circuit determined that the environmental petitioners were not "sovereigns," which was the rationale for granting standing to state petitioners in the U.S. Supreme Court's *Massachusetts v. EPA* decision.
- **North Dakota Petitions Supreme Court to Review Regional Haze Decision.** On February 7, North Dakota petitioned the U.S. Supreme Court to review the U.S. Court of Appeals for the Eighth Circuit's (Eighth Circuit) decision upholding EPA's decision to invalidate portions of the state's CAA Visibility Plan, which is used to address regional haze. The CAA Regional Haze Rule is aimed at improving visibility in national parks and wilderness areas by limiting emissions of nitrogen oxides (NOx), sulfur dioxide (SO2), and particulate matter (PM) from major stationary sources. The consolidated case involved EPA's determination to set a federal implementation plan after the agency found North Dakota's state implementation plan failed to adequately satisfy its obligations under the CAA. The state has petitioned the Court arguing that the Eighth Circuit's September decision applied the wrong standard of review.

If you have questions about topics covered in this Update, please contact Kyle Danish at kwd@vnf.com.

The Climate, Energy, & Air Update is intended as a general summary of major policy developments that we judge to be of interest to a broad range of our clients and friends. We welcome your comments and suggestions. Coverage in, and selection of topics for, the Update is not intended to reflect the position or opinion of Van Ness Feldman or any of its clients on any issue. This document has been prepared by Van Ness

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