NATIONAL LIME ASSOCIATION

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NLA Sustainability Committee Meeting

Arlington, VA

November 2, 2022

Legal Basis for EJ Policies

Karen Bennett
Lewis Brisbois, LLC

LEWIS BRISBOIS®

November 2, 2022

Environmental Justice

Its Evolving Role in Regulatory Decisions & Enforcement

Presented by Karen Bennett to The National Lime Association Fall Committee Meetings

Overview

I. Environmental Justice Defined
II. EPA Authorities
III. EPA Actions
IV. State Responses
V. Recommendations for Business
VI. Questions

Environmental Justice Defined

- The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, & policies. EPA Legal Tools to Advance Environmental Justice Handbook (Legal Tools).
- Under EPA guidelines, an action raises EJ concerns if it ***could***:
  - Create additional disproportionate outcomes,
  - Exacerbate existing disproportionate impacts, or
  - Present opportunities to address existing disproportionate impacts through the action under development

Authority

Civil Rights Act (1964) 42 U.S.C. 2000d et seq.

§601	§602
Prohibits the discrimination of individuals in federally assisted programs or activities "on the ground of race, color, or national origin."	Authorizes federal agencies "to effectuate the provisions of [§601] by issuing rules, regulations, or orders of general applicability."

If a recipient of federal funds is found in violation of Title VI, then that recipient may lose its federal funding.

Authority
EPA Regulations 40 CFR Part 7

40 C.F.R. §7.35 Programs or activities receiving EPA assistance, recipient shall not directly or through contractual, licensing, or other arrangements on the basis of race, color, or national origin…

Subject a person to segregation or separate treatment;

Deny a person or group the opportunity to participate as members of any planning or advisory body;

Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit ...

Use criteria or methods of administration "which have the effect of subjecting individuals to discrimination…"– Disparate effect

Choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination.

Environmental Statutes

According to EPA:

- Certain environmental statutes allow for and may even require consideration of EJ in permitting in some contexts (NEPA, CWA, CAA, SDWA, RCRA).
- Where EPA has authority under environmental statutes to consider impacts to those communities, EPA has authority to consider equitable treatment of underserved communities (EO 13985).
  - Example, CAA §211(o)(2)(B)(ii): EPA views consideration of economic and environmental factors as authority to account for impacts on communities with EJ concerns in establishing renewable fuels volumes

Impact of the use of renewable fuels on the cost to consumers of transportation fuel	Cost to transport goods	Impact on job creation, price and supply of agricultural commodities, rural economic development, food prices= these factors could affect EJ.

Executive Orders

Cumulative Impacts

- Authority to consider Cumulative Impacts/Effects
  - EPA relies on explicit statutory authority, The Food Quality Protection Act (pesticides) and TSCA 4(b)(2)(A) (under certain circumstances)
  - Implicit authority – EPA guidance and EO
    - "Sometimes more open-ended and in other contexts partially constrained" Legal Tools, pg. 7 **? ?**

EJ Then & Now

Title VI – non-discrimination, race, color, or national origin

1994 EO	2021 EOs
Protects low income and minorities	Expand protection to “underserved communities”, Black, Latino, Indigenous and Native American, Asian Americans, Pacific Islanders, religious minorities, LGBTO+, persons with disabilities, live in rural areas, persistent poverty or inequality (EO 13985).
Focus on environmental protection, access to information, and public participation for all communities	Mitigation and reparations, permit denial
	Meaningful involvement requires evidence of agency engagement, may affect substantive outcomes

EPA's EJ Expansion Raises Legal Questions

- Title VI protection – intentional discrimination based on race, color or national origin, *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001).
  - Individuals do not have a private right of action to bring Title VI *disparate impact claims* under §601 or regulations promulgated under §602.
  - Individuals may sue to enforce §601 based on *intentional discrimination* as defined in the statute.
    - A law is not unconstitutionally discriminatory solely because it has a disproportionate impact; must have a discriminatory purpose
    - Where there is disproportionate impact, courts look at the totality of the circumstances

EPA Disparate Impact Regulations

- SCOTUS – only where the right is created by the governing statute
  - No Title VI cause of actions for disparate impact
- CRA "we have found no evidence anywhere in the text to suggest that Congress intended to create a private right to enforce regulations promulgated under §602 … ." *Sandoval*, 532 U.S. 275, 290-91 (2001).
- "Disparate-impact regulations do not simply apply §601 … the private right of action to enforce §601 does not include a private right to enforce these regulations." *Id*. at 285.

Can Agency Regulations Forbid Activities Permissible Under §601?

- SCOTUS has not directly answered this question
- Since 2001, most courts find agency regulations under §602 that go beyond §601 are impermissible
- §602 authorized federal agencies to "effectuate the provisions of §601 … Congress did not authorize federal agencies to create new rights … and 601 does not create the right to be free from racially discriminatory effects. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 944 (9th Cir. 2003).
- However, Eleventh Circuit, 2015, affirmed 1993 M.D. Florida decision upholding regulations promulgated under Title VI may validly proscribe actions having a disparate impact on groups protected by the statute, even if those actions are not intentionally discriminatory.

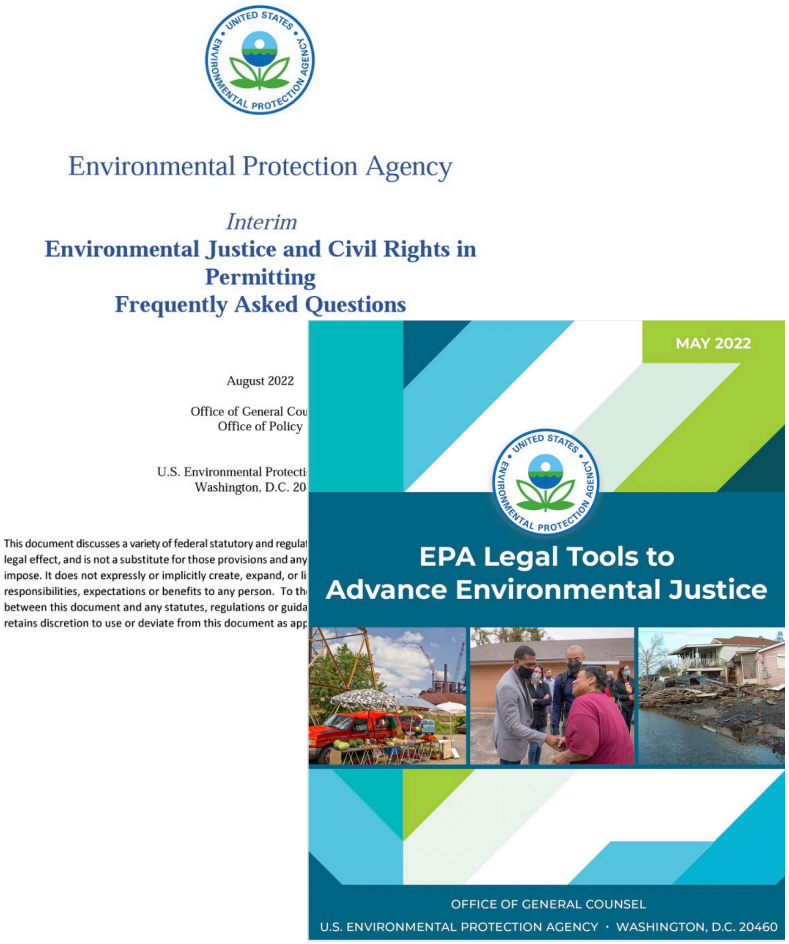
EPA Actions

a. Established National EJ Office
   - Office of Environmental Justice and External Civil Rights, Cabinet level Assistant Administrator
   - Dedicate 200 EPA staff
   - $3 billion climate and EJ grant

b. Incorporating EJ into Rulemaking, Permit and NEPA Reviews
   - PFAS, Lead & Copper Rule

c. Issued New EJ Guidance and Legal Interpretations
  - May 2022 EPA Legal Tools to Advance Environmental Justice
  - August 2022 Environmental Justice and Civil Rights in Permitting FAQ(Interim)

d. Increased Pressure on States
  - EPA EJ "educational" outreach resulting in increased number of 3rd party complaints/ EPA investigations
  - EPA FAQ/investigations pressures the States to do broad environmental, health and quality of life assessments, cumulative impacts analyses, mitigation, and permit denial


Environmental Protection Agency

Interim

Environmental Justice and Civil Rights in Permitting
Frequently Asked Questions

August 2022

Office of General Cou
Office of Policy

U.S. Environmental Protecti
Washington, D.C. 20

This document discusses a variety of federal statutory and regulat
legal effect, and is not a substitute for those provisions and any
impose. It does not expressly or implicitly create, expand, or li
responsibilities, expectations or benefits to any person. To th
between this document and any statutes, regulations or guida
retains discretion to use or deviate from this document as app

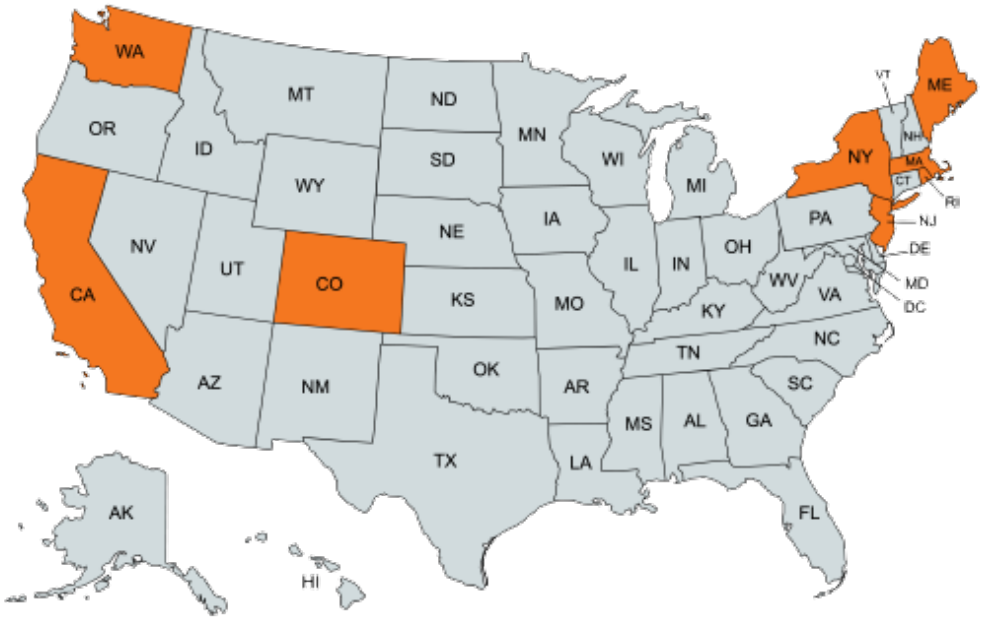
MAY 2022

EPA Legal Tools to Advance Environmental Justice

OFFICE OF GENERAL COUNSEL
U.S. ENVIRONMENTAL PROTECTION AGENCY · WASHINGTON, D.C. 20460

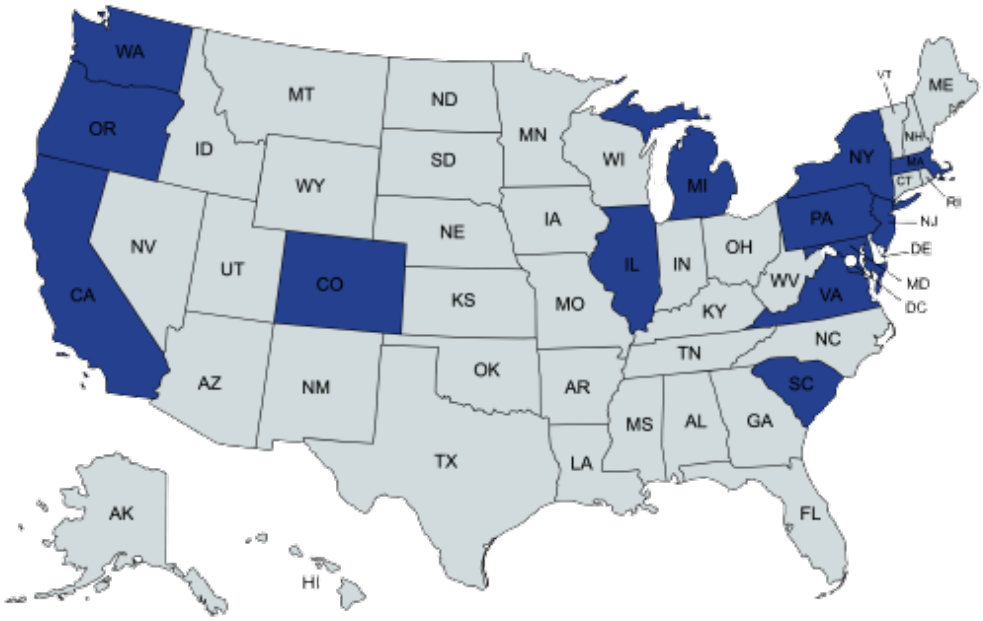
State Actions

- 8 States enacted EJ statutes or pending legislation
  - California, Colorado, Maine, Massachusetts, New Jersey, New York Rhode Island, Washington



State Actions (Cont'd)

- 13 States created Environmental Justice Commissions or Task Forces
  - CA, CO, IL, MD, MA, MI, NJ, NY, OR, PA, SC, VA, WA



State Actions (Cont'd)

Other States Questioned EPA's Authority

- Texas Commission on Environmental Quality, Nov. 12, 2021 Letter
  - States do not have the authority to carry out EPA EJ requests
- California State Implementation Plans (SIP) October 2022 Letter
  - Strongly criticized EPA new interpretations/lack of guidance
  - EPA places these areas at risk of CAA violations
- Michigan EPA request for alternative siting asphalt plant
  - MI opposed reversal of lawfully issued CAA permit for asphalt plant
- Louisiana CAA permit denials
  - LA considers appeal of court denial CAA permits in part due to flawed EJ analysis

State Actions (cont'd)

- **Texas Public Involvement Plan Form for Permit and Registration Applications**
  - New activities, major changes at existing plants, facilities and processes, activities likely to have significant public interest
  - Identifies applications that will benefit from an initial assessment of the need for enhanced public outreach
- pip-form-tceq-20960.pdf (texas.gov)

How Does This Play Out?

- No private right to sue regulatory authority for unintentional discriminatory effects of permit issuance
- Third parties must file complaint under EPA regulations 40 CFR 7.120
- EPA undertakes investigation
- EPA and regulatory authority enter into Informal Resolution Agreement- negotiate agreement that resolves the issues subject of the investigation
- Regulatory agency agrees to include additional terms and conditions, mitigation, or deny permit to avoid having to defend and potentially lose federal funding
- Permit decisions subject to judicial review
  - *RISE v. LDEQ* –
    - Scope of EJ screen and failure to do cumulative impact analysis at issue
    - EJ Screen data used to establish disproportional impact

Recommendations

- Monitor EJ legislation, participate in rulemakings in the states where you operate
- Understand project communities
- Understand and utilize EJ screening tools for internal decision-making
- Consider business/industry roundtable discussion for EJ strategy development

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BISGAARD & SMITH LLP

Another National EJ Tool – Environmental Justice Index

Jon De'Ath
NLA Sustainability Committee
November 2, 2022

Nationwide EJ Tools

1. White House Council on Environmental Quality (CEQ) Climate and Economic Justice Screening Tool
2. U.S.EPA's EJSCREEN 2.0
3. U.S. Department of Health and Human Services Environmental Justice Index
    1. Released August 10, 2022

EJI Summary

- Designed to quantify cumulative impacts of environmental burden on communities from the perspective on human health and health equity
- EJI also considers pre-existing health condition and various social factors (poverty, race, ethnicity) on communities

EJI Summary (cont)

- EJI assigns a single score EJ index at the census tract level
  1. Environmental Burden Module (air pollution, potentially hazardous & toxic sites, built environment, transportation infrastructure)
  2. Social Vulnerability Module (minority status, socioeconomic status, housing)
  3. Health Vulnerability Module (pre-existing chronic disease prevalence)

Purpose

- Assists individuals and community-based organizations, public health officials at local, state, and federal levels, scientists, and researchers to;
  - Prioritize areas
  - Educate and inform
  - Analyze to inform policy and decision making
  - Establish goals/measure progress towards EJ

Limitations

- Not designed to make definitive judgements on environmental injustices within a community
- Not to be used to quantify risk at individual level
- However, can be used to challenge permitting efforts within communities with a high EJ score (similar to other EJ tools)

Summary of ILA/EuLa Meeting

Bill Herz, NLA
Hunter Prillaman, NLA
NLA Sustainability Committee
November 2, 2022

NLA Strategy on Developing a Decarbonization Roadmap for Lime

Mathieu Bouchard
NLA Staff
NLA Sustainability Committee
November 2, 2022

What Is A Decarbonization Roadmap?

- A roadmap is a plan—general or specific—for achieving an industry's decarbonization goals
- May include specific commitments and timetable, or general goals

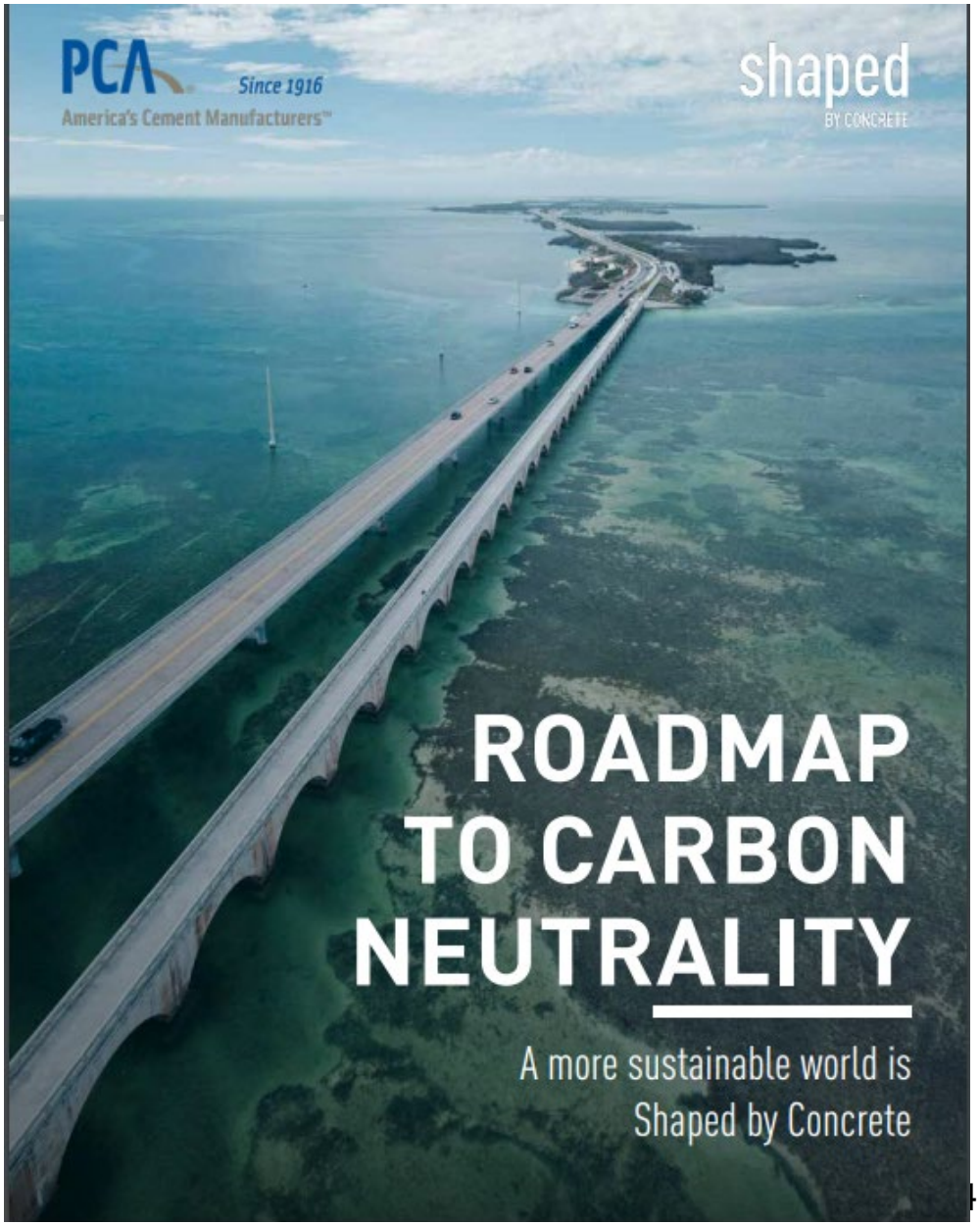
Why Develop a Roadmap?

- NLA Board agreed a roadmap project is timely
- Assist in obtaining resources, such as DOE and other grants and loans; pilot projects
- Industry image (comparison with other industries)
- Procurement, SEC, and other requirements
- Community pressure

What's in a Roadmap?

- Example: PCA's Roadmap for Cement

https://www.cement.org/docs/default-source/roadmap/pca-roadmap-to-carbon-neutrality_10_10_21_final.pdf



PCA's Goal

- PCA's goal is to achieve carbon neutrality by 2050
- Achievement is "contingent on changes in state and federal policies, standards, and specifications, and the time required for research and development to deliver technological advances"
- 3 categories of steps to reduce carbon

Category 1: Production

PRODUCTION: AT THE CEMENT PLANT	
Replace raw materials with decarbonated materials	Using decarbonated materials eliminates CO_2 emissions from processing traditional raw materials, like limestone.
Use alternative fuels	Replacing traditional fossil fuels with biomass and waste-derived fuels lowers greenhouse gas (GHG) emissions and keeps materials out of landfills.
Continue efficiency improvements	Increasing energy efficiency reduces the amount of CO_2 emitted for each ton of product.
Implement carbon capture, utilization, and storage (CCUS) technology	CCUS directly avoids a significant portion of cement manufacturing emissions.
Promote new cement mixes	Creating new cements using existing and even alternative materials reduces emissions from mining for new materials, while optimizing the amount of clinker used ensures emissions correspond to necessary production.
Increase use of portland-limestone cement (PLC)	As an existing lower-carbon blend, universal acceptance of PLC will reduce clinker consumption and decrease emissions.

Category 2: Construction

CONSTRUCTION: DESIGNING AND BUILDING	
Optimize concrete mixes	Considering the specific needs of the construction project and using only the materials necessary, avoiding excess emissions.
Use renewable fuels	Switching to solar, wind and other renewable sources of energy directly reduces emissions from other energy sources.
Increase the use of recycled materials	Diverting these materials from landfills.
Avoid overdesign and leverage construction technologies	Designing for the specific needs of the construction project reduces unnecessary overproduction and emissions; incorporating just-in-time deliveries.
Educate design and construction community	Improve design and specifications to be more performance oriented which will permit innovation in cement and concrete manufacturing. Encourage the use of advanced technologies to improve structural performance, energy efficiency, resiliency, and carbon sequestration.

Category 3: Concrete Infrastructure

EVERYDAY: CONCRETE INFRASTRUCTURE IN USE	
Incentivize energy efficient buildings	Increasing buildings' energy efficiency can cut energy use and resulting emissions from heating and cooling.
Reduce vehicle emissions by improving fuel efficiency	Because of its rigidity, concrete pavements enhance the fuel efficiency of vehicles driving over them, reducing vehicle emissions.
Decreased maintenance	Due to their durability, concrete structures (buildings, pavements, bridges, dams, etc.) last longer and require less frequent maintenance.
Recycling	Concrete in place can be 100% recycled, limiting the use of raw materials and production emissions.
Carbonation	Every exposed concrete surface absorbs CO_2 and over the course of its service life, a building can reabsorb 10% of cement and concrete production emissions.

Notable Characteristics

- Focus on entire value chain
- Life-cycle analysis
- Call for participation by other entities (such as government)
- Call for advocacy

What Would a Lime Roadmap Look Like?

- Some similarities to cement, but key differences
- Energy-based emissions—efficiency, fuel options (gas, renewables)
- Calcination emissions—carbon capture, storage, and reuse—kiln design, need for research and development

Issues for a Lime Roadmap

- How definitive a commitment?
- What are the "low-hanging fruit"—efficiency improvements, etc.?
- Potential need for new life-cycle analysis
- Investment in pilot projects, i.e. on carbon capture and cleaning

International Lime Industry

- European Lime Association (EuLA) working on a roadmap
  - Life-cycle analysis document
- Efforts in other countries, in some cases in combination with cement or other industries

Steps Forward for NLA

- Study PCA and other comparable roadmaps
- Produce outline of proposed roadmap
- Review in Committee
- Present recommendations to NLA Board
- Timeline?
- Discussion

Department of Energy Programs and Funding for Carbon Reduction

Dan Hancu
Senior Program Manager
Carbon Capture
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Federal "Buy Clean" Initiative EPA GHG Reduction Fund

Bradford Frisby, NLA
NLA Sustainability Committee
November 2, 2022

Federal "Buy Clean" Initiative

- Federal government using contracts to buy low-carbon construction materials
- Steel, concrete, asphalt, flat glass
- General Services Administration (GSA) issued Low Embodied Carbon Concrete Standards for all GSA projects
- Request for Information (RFI) sent to manufacturers

Federal Buy Clean—Cont'd

- RFI asks about availability of construction materials (concrete, steel, asphalt, glass, aluminum, insulation, roofing materials, gypsum board, and structural engineering wood) that have low carbon compared to industry avg.
- RFI used for $2 billion in spending
- RFI does not mention lime

EPA GHG Reduction Fund

- EPA wants input on how to spend its new $27 billion GHG Reduction Fund
- Grants for clean energy and climate projects that reduce GHG emissions
- Benefit low-income communities (EJ)
- RFI on how to implement this
- Comments due on December 5, 2022

EPA GHG Reduction Fund--Cont'd

- $7 billion for grants to enable low income communities to deploy or benefit from zero emission technologies
- $12 billion for financial and technical assistance for projects that reduce or avoid GHGs
- $8 billion for financial and technical assistance to lower GHGs in low-income and disadvantaged communities

2021 NLA Member GHG Summary (Draft)

Jon De'Ath
NLA Sustainability Committee
November 2, 2022

NLA GHG Protocol Responses

	2011	2019	2020	2021
No. of Companies	16	12	12	12
No. of Plants	48	45	43	43

NLA Member Kilns in Operation

	2019	2020	2021
Straight Rotary	49	48	47
Rotary Preheater	61	57	56
Vertical/Twin-shaft Vertical	10	10	12

Scope 1 Data Collected

- Calcination Emissions (by kiln)
  - Product type
  - %CaO and %MgO
  - Production, calculated emissions
- Byproducts and Waste Emissions
  - Waste type
  - %CaO and %MgO
  - Amount Sold/Not Sold, calculated CO_2 emissions

Scope 1 Data Collected

- Kiln Fuel Emission
  - Fuel types and amounts (by kiln)
  - Fuel heat values
  - Calculated CO_2, CH_4, N_2O emissions
  - CO_2 CEMS (EPA Tier 4) – 2 companies, 5 plants
- Other Combustion Sources (OCS)
  - As per EPA "Report CO_2, N_2O, and CH_4 emissions from each stationary fuel combustion unit other than lime kilns."
  - Fuel type, amount, and calculated CO_2 emissions

Data Not Collected

- Purchased electricity (~4-6% total emissions)
- Portable and emergency equipment (<1%)
- Quarry/Mine fuel (<1%)
- Emissions sequestered (0.3%)

Lime Produced and Byproducts Recycled

Million (MM) Metric Tons				
	2011	2019	2020	2021
Quicklime	17	15.6	13.9	15.1
Byproducts Recycled	1.0	1.4	1.0	1.1

Production Breakdown

Lime Product	% Total Production			
	2011	2019	2020	2021
Hi-Cal	78	79	79	78
Dolo	21*	19	18	20
Other (Mag lime, dead-burned, brick grain)		2	3	2

* Dolo plus "Other"

Byproduct Recycling

	Recycling Rate (%)		
WASTE TYPE	**2019**	**2020**	**2021**
BLENDED/UNSPECIFIED LKD	58.5%	49.4%	**99.6%**
DOLO LKD	**72.8%**	**66.4%**	**58.7%**
DOLO OFF-SPEC LIME	0%	0%	0%
DOLO SCRUBBER SLUDGE	0%	0%	0%
HICAL LKD	**70.3%**	**73.1%**	**79.7%**
HICAL OFF-SPEC LIME	34.8%	27.9%	26.2%
HICAL SCRUBBER SLUDGE	0%	0.0%	0%
MAG LIME LKD	0%	0%	7.1%
MAG LIME OFF-SPEC LIME	0%	0%	0%
MAG LIME SCRUBBER SLUDGE	0%	0%	0%
OTHER CALCINED WASTE	7.5%	10.1%	8.4%

Byproduct/Waste Statistics

	2011	2019	2020	2021
Overall Recycling Rate (LKD sold/total BPW produced)	42%	51.0%	46.9%	49.3%
All Byproducts and Waste Generation Rate (All BPW/total lime produced)		16.2%	14.7%	13.7%
LKD Only Generation Rate (LKD produced/total lime produced)		10.7%	9.8%	9.3%

Oxide Content of Lime

	HICAL LIME		
	CaO	MgO	TOTAL
2019	94.3	1.7	96.0
2020	94.2	1.6	95.8
2021	93.8	1.4	95.1

	DOLO LIME		
	CaO	MgO	TOTAL
2019	56.9	39.3	96.2
2020	57.1	39.5	96.6
2021	56.7	39.6	96.3

Oxide Content of LKD

	HICAL LKD		
	CaO	MgO	TOTAL
2019	47.0	1.7	48.7
2020	42.0	1.8	43.8
2021	41.6	3.0	44.6

	DOLO LKD		
	CaO	MgO	TOTAL
2019	24.9	18.2	43.1
2020	23.7	16.2	39.9
2021	28.2	16.3	44.5

Lime Industry Kiln Fuel Use (%)

	2011	2019	2020	2021
Coal	76	64	59	61
Coke	21	18	20	19
Natural Gas	**2.6**	**16**	**19**	**18**
Alternative Fuel	0.1	1.0	1.2	0.6
Fuel Oil	0.3	<1	<1	1.1

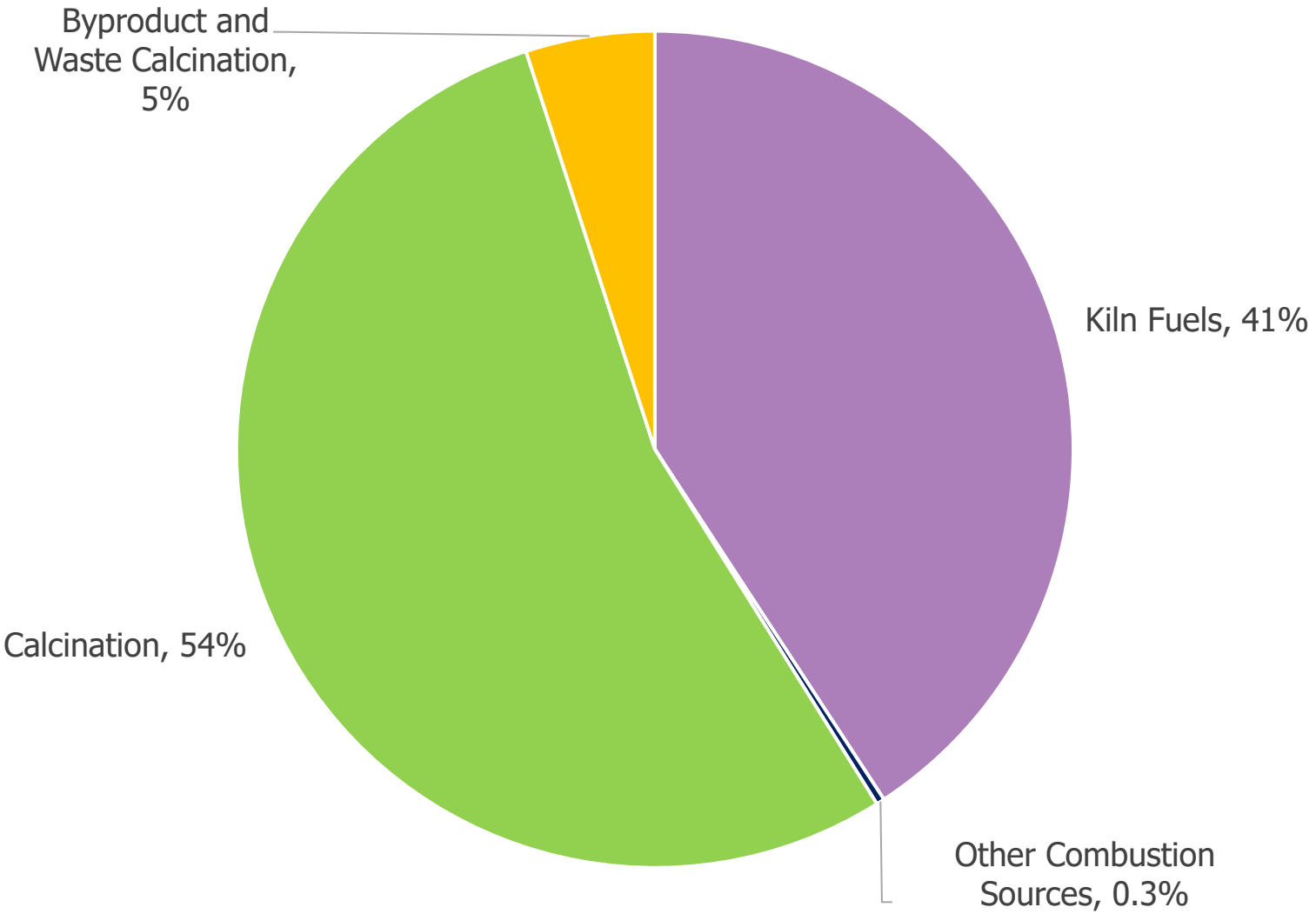
(Expressed as a percentage of total MMBTUs)

NLA CO_2 Emissions (MM Metric Tons) (based on protocol responses received)

	2019	2020	2021
Kiln Fuels[1]	9.37	8.25	9.0
Other Combustion Sources	0.07	0.07	0.07
Calcination	12.2	10.9	11.9
Byproduct and Waste Calcination	1.4	1.1	1.1
TOTAL	23.0	20.3	22.0

1. Total includes CH_4 and N_2O CO_2e

2021 NLA Member CO2e Emissions



Various Benchmarks

- Energy Intensity Benchmark
  - Sum CO_2 (kiln fuel emissions, other combustion sources, CH_4, N_2O CO_2e)/lime produced
    - Lime only, and lime & LKD
- Calcination Intensity Benchmark
  - Sum CO_2 (lime production, calcined by products & wastes)/lime produced + LKD sold

GHG Benchmarks

	2011	2019	2020	2021
EPA Calcination Emissions Intensity	0.80	0.80	0.79	0.79
EPA Energy-Related Intensity				
Lime & LKD	0.60	0.57	0.57	0.57
Lime only	0.64	0.62	0.62	0.61

Total EPA GHG Benchmarks

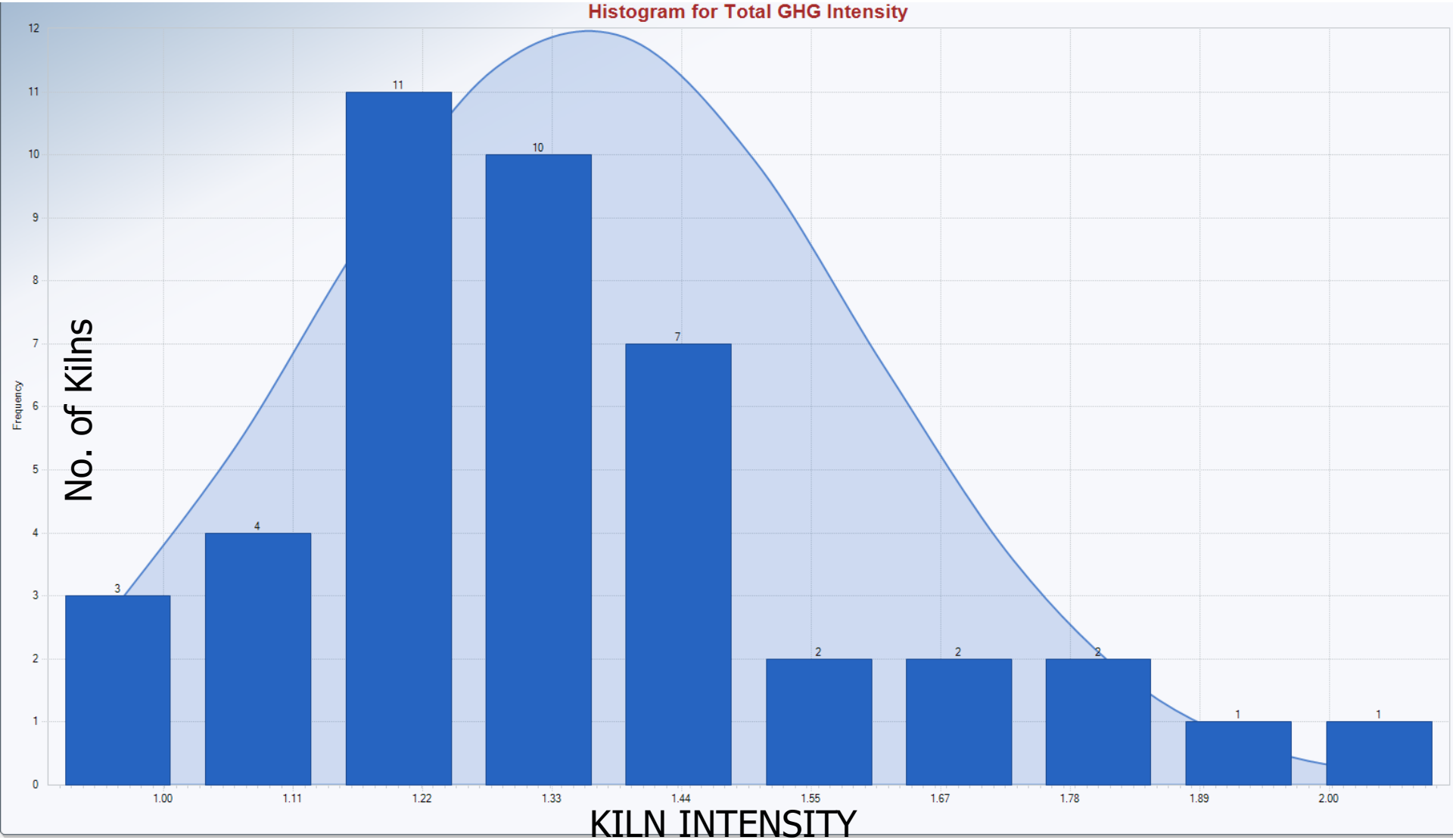
	All Lime		
	2019	2020	2021
Lime Only	1.39	1.38	1.39
Lime + LKD	1.36	1.36	1.36

Total EPA GHG Benchmarks

	Hi-Cal		
	2019	2020	2021
Lime Only	1.32	1.31	1.31
Lime + LKD	1.31	1.30	1.30

Total EPA GHG Benchmarks

	Dolo		
	2019	2020	2021
Lime Only	1.54	1.54	1.53
Lime + LKD	1.44	1.43	1.45


Histogram for Total GHG Intensity
Frequency
No. of Kilns
KILN INTENSITY
0
1
2
3
4
5
6
7
8
9
10
11
12
3
4
11
10
7
2
2
2
1
1
1.00
1.11
1.22
1.33
1.44
1.55
1.67
1.78
1.89
2.00

2021 Recap

- Various GHG benchmarks are essentially unchanged from previous years
- Approx 9 percent increase in production
- Slight increase in coal use/decrease in NG use
- LKD recycling – fluctuates within historical norms
  - Although, increase in "blended/unspecified" LKD recycling

Questions?

Resources for the Future Framework Lime Module

Jon De'Ath NLA

Resources for the Future (RFF)

- Nonprofit, nonpartisan, independent institution performing economic research on energy, environment, natural resources
  - RFF does not lobby and does not take institutional positions on issues

RFF Modules for Border Tax Adjustment

- Developed a proposed framework for a WTO compatible border tax adjustment (BTA) mechanism
- BTAs aim to limit competitiveness losses and GHG leakage
- Includes modules for about 40 NAICS code sectors, including lime
- The modules are designed to help government officials review requests for rebates and establish import charges, or craft policies to address GHG emissions

Draft Lime Module

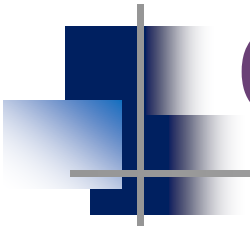
- Numerous factual errors and incorrect assumptions
- Incorrectly calculated greenhouse gas indices (GGIs)
  - Non plant or company specific
  - Too generic
  - Incorrectly calculated rebates

NLA Input

- NLA provided technical feedback and review of lime module
- Educated RFF how U.S. lime industry calculates GHG emissions (EPA/NLA approach)

Current Status

- Module posted September 30th.



Questions???

Legislative Update

Bradford Frisby, NLA

NLA Sustainability Committee

November 2, 2022

Congressional Elections

- November 8, 2022
- Five-Thirty-Eight Predictions (11/1/22):
  - 82% chance Republicans win the House
  - 50% chance that Democrats keep control of the Senate

Congressional Elections—Implications

- If Congress is divided, the chance of further climate legislation decreases
- If Republicans control the House, they may block some key regulatory actions (such as EPA's PM rule) if they cut off funding for them in appropriations
- It is unlikely Congress would address smaller rules such as the Lime RTR

Inflation Reduction Act

- Signed on August 16, 2022
- Revenues Raised: $737 billion
  - Prescription Drug Reform: $265 billion
  - 15% corporate minimum tax: $222 billion
  - Increased IRS Enforcement: $124 billion
  - Fee on Stock buybacks: $74 billion
  - Loss limitation extension: $52 billion

Inflation Reduction Act-Cont'd

- Government Spending: $437 billion
  - Climate Spending: $369 billion
  - Obamacare Extension (2025) $64 billion
  - Western Drought Resiliency $4 billion

- Estimated Deficit Reduction: $300 billion

Inflation Reduction Act-Cont'd

- Significant Climate Provisions:
  - Expands 45Q carbon capture tax credit
  - Clean Hydrogen tax credit
  - DOE grants of $5.8 billion for industry
  - DOE loans
  - EV tax credit ($7,500 new/$4,000 used)
  - Home Appliance tax credits
  - Clean Electricity Tax Credits

Inflation Reduction Act-Cont'd

- Methane fee (Oil and Gas)
- EPA funding for GHG rules
- State GHG reduction program funding
- Environmental Justice block grants
- "Fenceline" monitoring funding
- Low embodied carbon procurement stds
- EPA technical assistance for building materials

"45Q" Carbon Capture Credit

- Extends the credit until 1/1/2033
- Increases from $50 ton to $85/ton for carbon not utilized
- Increases from $35/ton to $60/ton for carbon used (such as oil recovery)
- Requires only 1,000 tons for direct air capture; 18,750 for power plants and 12,500 tons for other facilities

Low Embodied Carbon Procurement Standards

- $250 million to develop a program for environmental product declarations that include measurements of the embodied greenhouse gas emissions
- Life cycle – this includes all relevant stages of production, use, and disposal for construction materials and products

What was not included

- No “cap-and-trade” provisions
- No carbon taxes (except methane) as in the Senator Whitehouse bill
- No carbon border adjustment from Senator Whitehouse bill

Congress defines GHGs

- The Inflation Reduction Act adds a definition of greenhouse gases in several places to clarify that GHGs are "air pollutants" under the Clean Air Act
- This is important because it essentially ratifies the Supreme Court's decision in *Massachusetts v. EPA* holding that EPA may regulate CO2 as an "air pollutant"

West Virginia v. EPA

- The Supreme Court's decision in *West Virginia v. EPA* is still valid after passage of the Inflation Reduction Act
- It didn't address whether GHGs were air pollutants, but rather took issue with *how* EPA was regulating them

Senator Manchin Bill

- *The Energy Independence and Security Act of 2022*
- Streamlines permit process for energy and natural resources projects
- Sets one/two year NEPA review periods
- Designates lead federal agency and requires timelines
- Limits judicial review to 150 days

Senator Manchin Bill—Cont'd

- Prioritizes 25 energy projects
- Limits the ability of States to block projects under CWA Section 401
- Expands FERC jurisdiction over power transmission lines
- Authorizes the Mountain Valley Pipeline (a 303-mile natural gas pipeline from West Virginia to Virginia)

Senator Manchin Bill—Cont'd

- Political Prospects:
  - Withdrawn from the Govt. Funding Bill because couldn't get 60 votes
  - Government Funding Bill passed procedural vote in Senate in September (without Manchin bill) by 72-23 vote
  - Extends government funding through December 16, 2022
  - Manchin may try again later this year

SEC Climate Disclosure Rule

Bradford Frisby, NLA
NLA Sustainability Committee
November 2, 2022

SEC Climate Disclosure Rule

- SEC announced these sweeping new climate change disclosure requirements on March 21, 2022
- Published in FR on April 11, 2022
- Requires significant new climate-related disclosures
- Will be final in late 2022/early 2023
- Chamber and NAM both commented

SEC Climate Disclosure Rule

- The rule applies immediately to publicly-traded companies, and indirectly to those doing business with publicly-traded companies
- Publicly-traded suppliers and customers will demand your GHG information to comply with Scope 3 requirements*
- Banks and financial institutions will eventually require this information

SEC Climate Disclosure Rule—Cont'd

- Requires registrants to include climate disclosures in registration statements and annual reports including:
  - Climate risks reasonably likely to have a material impact on the business and consolidated financial statements
  - Actual and potential impacts of such risks on strategy, business model and outlook
  - Governance of climate risks and risk management process

SEC Climate Disclosure Rule—Cont'd

- Requires all registrants to include climate related financial statement metrics and related disclosures in a note to their audited financial statements.
- Requires "assurance" from accelerated and large accelerated filers for Scope 1 and Scope 2 emissions

SEC Climate Disclosure Rule—Cont'd

- Require disclosure of direct GHG emissions (Scope 1) and indirect emissions from purchased electricity or other forms of energy (Scope 2).
- Scope 3 emissions (upstream and downstream) required for larger companies if material to them or if they have set GHG emission reduction goals.

SEC Climate Disclosure Rule—Cont'd

- Press is reporting that SEC is considering dropping the "Scope 3" reporting requirements
- Scope 3 is the most controversial and most vulnerable to legal challenge
- This may signal that the SEC is likely to finalize the rule (otherwise they would not drop Scope 3)

Other Business/Adjourn