

Hot EPA Issues Heading into the Election Year

May 23, 2024 | Alert | By [Alexander Hecht](#), [John Lushetsky](#), [R. Neal Martin](#), [Myria S. Garcia](#)

SERVICE AREAS

- Environmental, Social & Corporate Governance

As we head into the 2024 election season, Congress and the executive branch continue to advance various policies related to the Environmental Protection Agency (EPA). In addition to the Fiscal Year 2025 appropriation for the EPA for the next fiscal year starting on October 1, 2024, there are various issues being debated, such as national air quality standards, federal support for electric vehicles, funding programs created under the Inflation Reduction Act, and reducing emissions from power plants. These and other environmental topics will generate continued debate over the remainder of the year, with the outcome of the November congressional and presidential elections determining what to expect in 2025.

EPA's FY 25 Budget Request

On May 8, 2024, the Senate Committee on Environment and Public Works held a [hearing](#) on the EPA's proposed Fiscal Year 2025 budget. President Biden has requested \$11 billion for the EPA, a 20% increase over the amount Congress approved for fiscal year 2024. During the hearing, EPA Administrator Michael Regan highlighted that the EPA's priorities for 2025 include "protecting air quality, cleaning up pollution, upgrading the nation's aging water infrastructure, urgently fighting the climate crisis, and advancing environmental justice."

Partisan Reactions to the EPA's Budget Request

During the Senate hearing, sentiments for the EPA stayed along party lines. Democrats support the EPA's budget request as necessary to help build a clean energy economy, address the climate crisis, and reduce greenhouse gas emissions. On the other hand, Republicans criticize the EPA's budget request as accelerating unrealistic regulations that impose steep compliance costs on businesses and consumers. Republicans also continue to accuse the EPA of overstepping its regulatory authority and express concerns about funding fraud and wasteful programs.

Arguments Ahead

During the hearing, five common themes emerged that will continue to serve as hot issues of debate going into the election year. We at ML Strategies have helped companies make sense of changing regulatory landscapes for years and are uniquely positioned to help you understand how to navigate the issues of debate below.

Air Quality

In April 2024, the EPA [released a proposal](#) to replace the current secondary sulfur dioxide standard with a new annual secondary standard of 10 – 15 parts per billion (ppb) while retaining the existing secondary standards for oxides of nitrogen (NOx) and particulate matter (PM). Comments on this rule are due by June 14, 2024, and the EPA faces a court-ordered deadline to finalize the rule by December 10, 2024. Earlier in February, the EPA had [finalized](#) a rule that strengthened the annual health-based [national ambient air quality standard](#) for fine particulate matter (PM2.5) from a level of 12 micrograms per cubic meter to 9 micrograms per cubic meter. In a [fact sheet](#), the EPA highlighted how critical these rules are to improving public health.

Debate

Republicans such as Senator Shelley Moore Capito (R-WV) and Rep. Cathy McMorris Rodgers (R-WA) have [stated their criticism](#), describing the rules as forcing unrealistic compliance standards and failing to incorporate stakeholder feedback. Senators Bill Cassidy (R-LA) and Tommy Tuberville (R-AL) sent a [letter](#) on February 28, 2024, demanding the EPA rescind the fine particulate matter rule and revisit it in 2025. The letter was co-signed by 30 other Republican senators. It remains to be seen what action will be taken, but air quality rules are sure to be defended by Democrats, such as Senate Majority Leader Chuck

Schumer (D-NY), who have **praised** the EPA's Clean Air Act proposals.

Electric Vehicle (EV) Mandates

On March 20, 2024, the EPA announced a **final rule** that sets new protective standards to further reduce air pollutant emissions from light-duty and medium-duty vehicles starting with model year 2027. The final rule builds upon the Biden administration's clean climate agenda, which has been investing in EV manufacturing, EV charging infrastructure, and tax credits to encourage EV purchases.

Debate

Republican Senators Dan Sullivan (R-AK) and Pete Ricketts (R-NE) have **stated** they plan on introducing a Congressional Review Act resolution of disapproval to nullify the Multi-Pollutant Emissions standards. This is consistent with overall Republican opposition to EVs. In December 2023, the House of Representatives passed Rep. Tim Walberg's (R-MI) **Choice in Automobile Retail Sales (CARS) Act**, which would prohibit the EPA's authority to regulate vehicle emissions standards or mandate the use of any specific technology. House Energy and Commerce Committee Republicans are particularly **outspoken** against EVs, and last year Chair Cathy McMorris Rodgers (R-WA) led more than 150 House Republicans in sending a **letter** urging the Biden administration to abandon its efforts to mandate EVs. Meanwhile, one of Donald Trump's main **campaign** points is to repeal "radical" EV mandates. Given that Democrats have supported the Biden administration's EV efforts and **released** statements applauding the EPA's emission standards, the topic is sure to be at the forefront of debate during the election season.

Greenhouse Gas Reduction Fund

The Inflation Reduction Act (IRA) created the **Greenhouse Gas Reduction Fund (GGRF)**, a \$27 billion investment to mobilize financing and private capital to address the climate crisis via three programs. On April 4, 2024, the EPA announced \$14 billion for awardees of the **National Clean Investment Fund** and \$1 billion for awardees of the **Clean Communities Investment Accelerator**. On April 22, 2024, the EPA announced \$7 billion for awardees of the **Solar for All** program. The National Clean Investment Fund provides grants to national nonprofit clean financing institutions, the Clean Communities Investment Accelerator competition provides grants to hub nonprofits to deliver funding and technical assistance to local community lenders, and the Solar for All program expands the number of low-income and disadvantaged communities primed for residential solar investment.

Debate

Republicans have **denounced** the GGRF as a reckless spending initiative that advances a "rush-to-green agenda" and potentially funnels money to foreign adversaries and ineffective projects. In March 2024, Republicans **passed a bill** to repeal the EPA's **GGRF**, building on their advocacy from November 2023 to **defund** the EPA entirely. However, Democrats such as House Energy and Commerce Committee Ranking Member Frank Pallone, Jr. (D-NJ) have **defended** both the GGRF as critical to both the clean energy transition and the EPA for ensuring proper financial safeguards are in place. The Biden administration will likely try to deploy the GGRF's funding by September 2024 to better avoid a potential Trump administration's impoundment of EPA funds.

PFAS

The EPA **released** its **final rule** designating two per- and polyfluoroalkyl substances (PFAS), perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), as "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This is the first time the EPA has directly designated any substance as a hazardous substance under its CERCLA 102(a) authority. This designation grants the EPA the power to investigate releases of PFOA and PFOS and compel potentially responsible parties (PRPs) to remediate releases of PFOA and PFOS through specific CERCLA enforcement provisions. The goal of the rule is to focus on holding accountable parties that have played a role in the spread of PFAS into the environment. Alongside the final rule publication, the EPA also released a **PFAS Enforcement Discretion and Settlement Policy Under CERCLA**, indicating its intent to pursue federal agencies or federal facilities when they are responsible for PFAS contamination.

Debate

An eye should be kept on Republicans who may introduce legislation to push back against this rule. Senator Shelley Moore Capito (R-WV) **stated** that Republicans must pass legislation to "safeguard American ratepayers from the financial burden imposed by this misguided rule," while Rep. Cathy

McMorris Rodgers (R-WA) **stated** that the rule is “far-reaching and will make life less affordable for Americans.” However, Democrats believe the rule is an important and necessary action to protect Americans and hold polluters accountable. Senator Joe Manchin (D-WV) led 36 senators in a **letter** urging President Biden to include funding to tackle PFAS contamination last year. Senator Patty Murray (D-WA) **highlighted** how vital it is to ensure individuals are protected from PFAS and criticized Republican efforts to cut funding initiatives combatting PFAS contamination.

Power Plant Climate Rules

On April 25, 2024, the EPA announced a suite of **final rules** to reduce pollution from fossil fuel-fired power plants, aiming to protect communities from pollution and improve public health. This suite includes a landmark rule mandating that all new gas and existing coal plants reduce their greenhouse gas emissions by 90% by 2032, a final rule tightening the Mercury and Air Toxics Standards (MATS) for coal-fired power plants, a final rule to reduce pollutants discharged through wastewater from coal-fired power plants by more than 660 million pounds per year, and a final rule that will require the safe management of coal ash that is placed in areas previously unregulated.

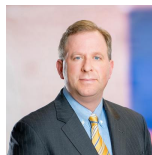
Debate

The new carbon emissions regulations come nearly two years after the US Supreme Court **struck down** a previous power plant emissions rule developed during the Obama administration, which sought to spur a shift from coal to cleaner energy sources. The case ruled that the Clean Air Act did not expressly authorize the EPA to require electricity generators to shift from fossil fuels to energy sources that emit less carbon dioxide. Although the new plant emissions rule does not directly require a shift from fossil fuels, the EPA is still likely to face legal challenges over its authority. On May 22, 2024, the Edison Electric Institute (EEI) announced it is suing the Biden administration over the power plant rule. EEI, an influential trade group for large electricity generators, is arguing that carbon capture and sequestration technologies are not ready for deployment. The decision represents a shift for the powerful trade group, given that EEI did not mount a legal challenge to the Obama-era Clean Power Plan and filed an amicus brief in defense of the EPA’s regulatory authorities. The West Virginia attorney general’s office has also **published** its intent to challenge the rule and Senator Shelley Moore Capito (R-WV) **released** a separate statement indicating that she intends to introduce a Congressional Review Act resolution of disapproval to try and overturn the rule. Republicans have long **criticized** the EPA’s efforts to tackle power plant environmental issues, but now may also find themselves with some Democratic allies such as Rep. Marcy Kaptur (D-OH), who led four Democratic colleagues in a **letter** to the Biden administration expressing concern that the rule would increase risks to electric reliability.

How ML Strategies Can Help

As debate over these issues and others emerge throughout the year, our professionals have decades of experience working in and interfacing with state governments, Congress, and executive agencies. Please feel free to contact us if you have further questions. We would welcome the opportunity to start a conversation with you.

Authors



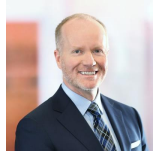
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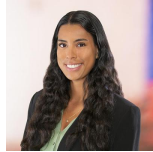
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