

GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

H.R. 5073 – Promoting Domestic Energy

Production Act. On July 28, [H.R. 5073](#), a bipartisan bill known as the Promoting Domestic Energy Production Act, was introduced by Rep. Mike Carey (R-OH) and Rep. Vicente Gonzalez (D-TX). The legislation would allow “energy companies to deduct costs, including labor and safety, associated with oil and gas exploration.” [Read more](#). Specifically, the measure would allow for the deduction of intangible drilling costs, effectively reversing a provision in last year’s Inflation Reduction Act (IRA) that targeted domestic oil and gas production. The IRA imposed a 15% corporate minimum tax on book income on American companies. This is notable because “while companies in most industries can still reduce taxable income by the amount of depreciation deductions received under corporate tax, oil and gas companies are not able to do so.” As noted by Rep. Carey, “Unfortunately, the Inflation Reduction Act limited the ability of energy companies to deduct intangible costs and depreciating assets. The Promoting Domestic Energy Production Act allows companies to consider intangible drilling costs when calculating their income for tax purposes. These are the same deductions that every other industry is allowed to utilize.” [Read more](#).

Senate Letter to U.S. Attorney General Urging

Action Against the Fossil Fuel Industry. On July 31, four senators, led by Sen. Bernie Sanders (I-VT), sent a letter to U.S. Attorney General Merrick Garland “to strongly urge the Department of Justice to bring suits against the fossil fuel industry for its longstanding and carefully coordinated campaign to mislead consumers and discredit climate science in pursuit of massive profits.” [Read the letter here](#). In response to the letter, “Industry leaders point out that the computer, internet,

and electricity used to write the letter, their cell phones, eyeglasses, other technology, the methods of transportation they use to travel to and from Washington, D.C., are also made possible by the fossil fuel industry.” Ed Longanecker, President of the Texas Independent Producers & Royalty Owners Association, told *The Center Square*, that the request “is not surprising, but it’s incredibly unfortunate as it does nothing to help the American people. In fact, these kinds of distractions do the opposite by putting further strain on companies that supply the energy that fuels our modern society and makes the protections, conveniences, and products we all value and utilize on a daily basis possible.” [Read more](#).

FEDERAL – Regulatory

BLM Draft Resource Management Plan – Colorado.

On August 2, the Bureau of Land Management (BLM) released a notice of availability for a Draft Resource Management Plan and Supplemental Environmental Impact Statement for the Colorado River Valley Field Office and Grand Junction Field Office which arose from prior litigation. ([88 Fed. Reg. 51855](#)) The areas cover “approximately 494,160 acres of BLM-administered surface lands and approximately 695,210 acres of BLM-administered federal fluid mineral estate are in Eagle, Garfield, Mesa, Pitkin, and Routt Counties in Colorado” and “approximately 1,060,900 acres of BLM-administered surface lands and approximately 1,226,450 acres of BLM-administered federal fluid mineral estate are in Garfield, Mesa, Montrose, and Rio Blanco Counties in Colorado.” [Read more](#). The BLM “encourages the public to provide information and comments pertaining to the analysis presented in this draft supplemental EIS.” The comment period will be open for 90 days. According to *Bloomberg Government*, areas with “low or medium oil and gas production potential will be closed to leasing and drilling

under a proposed plan.” In short, the plan would “block oil and gas leasing across more than 1.5 million acres of federal public land in western Colorado’s Colorado River Valley and around the city of Grand Junction” but “leaves 382,000 acres of land with ‘high’ oil and gas potential open to leasing. But according to Kathleen Sgamma, president of the Western Energy Alliance, and reported by *Energy in Depth*, “the proposed plan is aimed at removing oil and gas development from BLM lands, and will stop responsible energy development and other productive uses of the land.” [Read more.](#)

BLM Resource Advisory Councils – Colorado.

On August 9, the BLM published a *Statewide Call for Nominations for Colorado Resource Advisory Councils* ([88 Fed. Reg. 53907](#)) requesting public nominations for the BLM Colorado Northwest, Southwest, and Rocky Mountain Resource Advisory Councils (RAC) “to fill existing vacancies, as well as member terms that are scheduled to expire. The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.” Interested parties may self-nominate. The nomination period will be open through September 8, 2023. [Read more.](#)

BLM Oil and Gas Lease Sale – Nevada. On August 8, the BLM “opened a 30-day public comment period to receive public input on five oil and gas parcels totaling 4,538 acres that may be included in an upcoming lease sale in Nevada. The comment period ends September 7, 2023. The BLM completed scoping on these parcels in June 2023 and is now seeking public comment on the parcels, potential deferrals, and the related environmental analysis. BLM will use input from the public to help complete its review of each parcel and determine if leasing of these parcels conforms with all applicable laws, policies, and land use plans.” [Read more.](#)

BLM Grand Staircase-Escalante National Monument – Utah. On August 10, the BLM published a Notice of Availability and opened a 90-day public comment period for the Draft Resource Management Plan and Environmental Impact Statement for the Grand Staircase-Escalante National Monument, “which would

replace the existing 2020 Record of Decision and Approved Resource Management Plans for the Grand Staircase-Escalante National Monument and 2020 Record of Decision and Approved Resource Management Plan for the Kanab-Escalante Planning Area that together guide the management of approximately 1.87 million acres of public lands.” (See [88 Fed. Reg. 54663](#)). The public comment period closes Nov. 9, 2023. [Read more.](#) The BLM will also hold “five open-house forum public meetings with opportunities to speak with resource specialists: two virtual meetings and three in-person meetings, one each in Escalante, Kanab, and Panguitch.” The first announced meeting will take place on September 12. To register and learn more about the meeting, [Read more.](#)

BLM Oil and Gas Leasing – Utah. On August 9, the BLM “opened a 30-day public comment period for a supplemental environmental assessment to consider leasing 59 oil and gas parcels totaling 121,548.98 acres in southern Utah. The comment period will close at 4:30 p.m. MT on Sept. 8, 2023. The decisions to lease these parcels were challenged in court after BLM auctioned the parcels in competitive oil and gas lease sales in September and December 2018. In accordance with a settlement agreement, BLM is seeking public comments to consider whether to affirm the 2018 decision to approve the leases, amend and affirm the leases with revised terms, or cancel all or a portion of the leases.” [Read more.](#)

Energy Department Carbon Capture Funding – Louisiana; Texas. On August 11, the U.S. Department of Energy “announced up to \$1.2 billion to advance the development of two commercial-scale direct air capture facilities in Texas and Louisiana. These projects — the first of this scale in the United States — represent the initial selections from the President’s Bipartisan Infrastructure Law-funded Regional Direct Air Capture (DAC) Hubs program, which aims to kickstart a nationwide network of large-scale carbon removal sites to address legacy carbon dioxide pollution and complement rapid emissions reductions.” [Read more.](#) According to the Energy Department, this funding “will be the world’s largest investment in engineered carbon removal in history and each Hub will eventually remove

more than 250 times more carbon dioxide than the largest DAC facility currently operating.” [Read more.](#)

EPA Greenhouse Gas Reporting Rule. (*Update to 5/30/23 Report*) To update our prior reporting, on August 1, the U.S. Environmental Protection Agency (EPA) published a proposed rule, *Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems* ([88 Fed. Reg. 50282](#)), that “is proposing to amend requirements that apply to the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Rule to ensure that reporting is based on empirical data, accurately reflects total methane emissions and waste emissions from applicable facilities, and allows owners and operators of applicable facilities to submit empirical emissions data that appropriately demonstrate the extent to which a charge is owed. The EPA is also proposing changes to requirements that apply to the general provisions, general stationary fuel combustion, and petroleum and natural gas systems source categories of the Greenhouse Gas Reporting Rule to improve calculation, monitoring, and reporting of greenhouse gas data for petroleum and natural gas systems facilities. This action also proposes to establish and amend confidentiality determinations for the reporting of certain data elements to be added or substantially revised in these proposed amendments.” According to the EPA, there are four parts to their proposed amendments to this greenhouse gas reporting rule established in 2009, “which: (1) Address gaps in the total methane emissions reported by facilities by adding several new covered sources such as ‘other large release events,’ that would capture abnormal methane emission events that are not fully accounted for using existing methods; (2) Add new or revise existing calculation methodologies to improve the accuracy of reported emissions data for methane and other greenhouse gases and incorporate additional empirical data; (3) Collect data at a more granular level to improve verification and transparency of the data collected; and (4) Make other technical amendments, clarifications, and corrections to improve understanding of the rule.” [Read a detailed rule analysis here.](#) The public comment period is open through October 2, 2023. The EPA also noted that “Under the Paperwork

Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 31, 2023.” [Read more.](#) The EPA will also be holding a virtual public hearing on August 21, 2023 for the proposed rulemaking. [To register and attend read more here.](#) If you wanted to be a speaker, the last day to pre-register to speak will be August 16, 2023. On August 18, 2023, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: www.epa.gov/ghgreporting. Each commenter will have four minutes to provide oral testimony. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to GHGReporting@epa.gov.

NLRB Employer Rules. On August 2, the National Labor Relations Board issued an administrative decision and order in [Stericycle, Inc. and Teamsters Local 628](#) (Cases 04–CA–137660, 04–CA–145466, 04–CA–158277, and 04–CA–160621) in which it adopted “a new legal standard to decide whether an employer’s work rule that does not expressly restrict employees’ protected concerted activity under Section 7 of the National Labor Relations Act (Act) is facially unlawful under Section 8(a)(1) of the Act.” [Read a detailed case analysis here.](#) According to law firm Steptoe & Johnson PLLC, “This case is the latest in what has been a continued effort to roll back precedents set under the Trump administration. In *Stericycle, Inc.*, the Board reversed a 2017 decision that addressed how to analyze whether employer rules infringe on employees’ rights under the National Labor Relations Act (NLRA) to engage in concerted activities. The Board explained that it will examine rules from the perspective of an employee who is economically dependent on the employer to determine if an employee could reasonably interpret the rule to restrict or prohibit his or her rights protected under the NLRA. If it does so, the rule will be found unlawful, unless the employer can prove that it has a legitimate and substantial business interest that cannot be accomplished with a more narrowly tailored rule.” In short, “the Board will scrutinize workplace rules

and employee handbook policies more closely than it has in recent years. To repeat — this impacts all employers, not just those with unionized workforces. Importantly for employers, workplace rules that were previously held to be permissible — such as restricting photography in the workplace or requiring civil conduct — may now be unlawful if a reasonable employee could interpret the rules as chilling protected rights. This outcome is particularly likely if the rules could be more narrowly tailored to protect the employer's interests." [Read more.](#)

Offshore Leasing Plan. On August 1, a coalition of state and private oil and gas producing associations, including the American Petroleum Institute and the Independent Petroleum Association of America, sent a letter to President Biden, calling on the administration to finalize an offshore leasing plan. The organizations urge the administration "to finalize a new National Outer Continental Shelf Oil and Gas Leasing Program (five-year leasing program) that includes the 11 lease sales proposed in the Proposed Program released on July 1, 2022, and to begin pre-leasing work now so that the Interior Department can start holding sales in 2024 without any additional delays." They further state, "Time is running out to avoid significant consequences that could result from a prolonged gap in federal offshore leasing and production in the years ahead." [Read the letter here.](#)

ONRR Electronic Provision of Records. On August 9, the Interior Department's Office of Natural Resources Revenue (ONRR) published a final rule, *Electronic Provision of Records During an Audit* ([88 Fed. Reg. 53790](#)), that amends existing regulations to allow ONRR and other authorized Interior Department "representatives the option to require that an auditee use electronic means to provide records requested during an audit of an auditee's royalty reporting and payment." This rule is effective 30 days following the publishing date. [Read more.](#)

Treasury Department Tax Credits for Solar and Wind Facilities. On August 10, the U.S. Department of the Treasury announced final rules and procedural guidance for an Inflation Reduction Act program that "provides up

to a 20-percentage point boost to the Investment Tax Credit for qualified solar or wind facilities in low-income communities." [Read more.](#) According to the Treasury Department, "The goals of the program are to increase clean energy facilities in low-income communities, encourage new market participants, and benefit individuals and communities that have experienced adverse health or environmental effects or lacked economic opportunities." [Access a White House Clean Energy Update on the program here.](#) As reported in *The Hill*, "eligible categories include 700 megawatts to facilities in low-income neighborhoods; 200 to facilities on tribal land; 200 to facilities located in federally-subsidized housing; and 700 to facilities that generate electricity where at least half of the financial benefit goes to households under 200 percent of the poverty line." [Read more.](#)

White House Council on Environmental Quality Proposed Rulemaking. On July 31, the White House Council on Environmental Quality (CEQ) released a proposed rule, *National Environmental Policy Act Implementing Regulations Revisions Phase 2* ([88 Fed. Reg. 49924](#)). According to the CEQ, this "Bipartisan Permitting Reform Implementation Rule" seeks "to revise its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), including to implement the Fiscal Responsibility Act's amendments to NEPA. CEQ proposes the revisions to provide for an effective environmental review process that promotes better decision making; ensure full and fair public involvement; provide for an efficient process and regulatory certainty; and provide for sound decision making grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects. CEQ proposes these changes to better align the provisions with CEQ's extensive experience implementing NEPA; CEQ's perspective on how NEPA can best inform agency decision making; longstanding Federal agency experience and practice; NEPA's statutory text and purpose, including making decisions informed by science; and case law interpreting NEPA's requirements. CEQ invites comments on the proposed revisions." [Read more.](#) In short, the rule would streamline the NEPA process "as part of the deal

reached to raise the debt ceiling earlier this year. The rule streamlines the environmental review process under NEPA by allowing multiple agencies to develop joint categorical exclusions, the term for actions that do not affect the environment enough to require an environmental impact statement.” [Read more](#). However, as reported by *Bloomberg Government*, Alex Herrgott, who led the Federal Permitting Improvement Steering Council during the Trump administration, “said the proposal would yield only a modest impact on permitting times because they don’t address the real problem: the hundreds of laws and regulations governing permitting at the federal, state, and local levels. Those standards often conflict with one another and leave developers confused.” The public comment period is open through September 29, 2023. [Read more](#). For a deeper dive into the rulemaking, read a detailed summary from law firm Covington & Burling LLP [here](#). In addition, the CEQ will hold a number of virtual public meetings starting on August 26, 2023. To register and attend, [Read more here](#).

White House Office of Management and Budget Environmental Guidance. On August 2, the White House Office of Management and Budget released “proposed guidance for assessing changes in environmental and ecosystem services in benefit-cost analysis.” (See *Request for Comments on Proposed Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis*; [88 Fed. Reg. 50912](#)) In short, the guidance, once finalized, would instruct federal agencies to consider environmental and ecosystem impacts as part of the cost-benefit analysis process when issuing new rulemaking. As reported by *The Hill*, “the draft guidance would encourage agencies to make sure their analyses are broad enough to include benefits provided by ecosystems and give them a monetary value or otherwise quantify them or describe them qualitatively in their analysis of an action’s potential impacts.” It is yet unclear how this new framework under the cost-benefit analysis will impact future rulemaking. The public comment period is open through September 18, 2023. [Read more](#).

FEDERAL – Judicial

ANWR Leasing – Alaska. On August 7, the U.S. District Court for the District of Alaska let stand a Bureau of Land Management order to place a temporary moratorium on the federal government’s implementation of an oil and gas leasing program on the Coastal Plain of the Arctic National Wildlife Refuge (ANWR). In *Alaska Industrial Development and Export Authority v. Biden* (Case No. 3:21-cv-00245-SLG), the court affirmed the Interior Department’s authority “to pause leasing as the agency completes a new National Environmental Policy Act analysis of how fossil fuel development would affect the 1.6-million-acre refuge.” In its analysis, the court held that “given the temporary nature of the Moratorium and their desire to address legal issues that could stymie the Program while balancing” conservation goals the “rule of reason” leaned in the government’s favor. “Second, Congress has not provided any timetable for implementation of the Program beyond the requirements to conduct two lease sales within set periods of time, neither deadline of which Agency Defendants have violated. Third, the delays have resulted only in possible economic harm, as human health and welfare are not directly impacted by the Moratorium.” And fourth, the government is delaying the Program to ensure the “NEPA review comports with the law.” [Read more](#).

Greater Sage-Grouse – Wyoming. On August 7, the U.S. Court of Appeals for the Tenth Circuit, on appeal from the U.S. District Court for the District of Wyoming, ruled in favor of the Bureau of Land Management (BLM) approval of a natural gas development project over the objections of environmentalists. In *Western Watersheds Project v. U.S. Bureau of Land Management* (Case No. 22-8022), the court addressed a challenge to the BLM’s “approval of Jonah Energy’s development project on state and federal land in southwestern Wyoming. The project is designed to drill exploratory wells on lands for which Jonah possesses development rights.” The environmentalists argued that the “BLM inadequately considered the impacts of the project on sage-grouse populations and pronghorn antelope migration and

grazing patterns. They also object[ed] to BLM's approval of the order of development of the affected lands, arguing that BLM should have required a different sequence of development." The court disagreed, concluding "that BLM adequately collected and considered information on the sage-grouse and pronghorn, and selected a development plan that meets the statutory requirements." The approved project allows Jonah Energy LLC to drill 3,500 natural gas wells across 141,000 acres in the Upper Green River Basin. [Read more.](#)

STATE – Legislative

County Recorders – Illinois. On July 28, Gov. J.B. Pritzker (D) signed [SB 2227](#) into law. Sponsored by Sen. Sally Turner (R), the bill amends the Recorder Division of the Counties Code with multiple changes including amending certain fees, allowing for fee waivers, and procedures related to recording instruments, among other provisions. For a full summary of the provisions, [Read more here.](#) The Act takes effect on January 1, 2024.

Independent Contractors – Illinois. (*Update to 3/6/23 Report*) On August 4, Gov. J.B. Pritzker (D) signed [HB 1122](#) into law. Sponsored by Rep. Will Guzzardi (D), the bill creates the Freelance Worker Protection Act (FWPA) which "defines a 'freelance worker' as anyone hired or retained as an independent contractor to provide products or services in Illinois or for any Illinois-based entity in exchange for compensation of at least \$500 (either in a single contract or in the aggregate of all contracts during the last 120 days). However, the FWPA specifically excludes: (1) workers performing construction services; (2) workers performing services as an employee for a contractor who engages in construction; (3) workers engaged in the traditional employer-employee relationship as defined by the Illinois Wage Payment and Collections Act; and (4) all foreign, federal, state, and local government entities including school districts. In addition, the law defines 'freelance worker' as a 'natural person,' which is defined as an 'individual human being.'" The FWPA provides three requirements for hiring a freelance

worker: (1) the hiring of a freelance worker "to provide services or products valued at \$500 or more requires that the agreement be memorialized in a written contract;" (2) the contracting company/entity "must pay the freelance worker within 30 days after the freelance worker has completed the services or delivered the product;" and (3) "contracting entities are prohibited from engaging in any discriminatory, retaliatory, or harassing behavior toward contracted freelance workers." According to Gov. Pritzker, the bill aims to "protect freelance workers from intimidation, harassment, and discrimination from hiring parties, requires timely compensation and requires employers to provide freelance workers with written contracts." The Act takes effect July 1, 2024. [Read more.](#)

Electronic Nontestamentary Estate Planning Documents – Illinois. On July 28, Gov. J.B. Pritzker (D) signed HB 2269 into law. Sponsored by Rep. Margaret Croke (D), the bill amends the Electronic Wills and Remote Witnesses Act and changes the short title of the Act to the Electronic Wills, Electronic Estate Planning Documents, and Remote Witnesses Act. The bill defines various estate, trust, and testamentary terms and provides for electronic estate-related documents and signatures. The Act takes effect on January 1, 2024. [Read more.](#)

Regulatory Reduction Task Force – Wyoming. On August 11, the Wyoming Legislature's Regulatory Reduction Task Force announced "a survey where the public can provide input on statutes or other areas where the Task Force can reduce the regulatory burden on Wyoming's businesses and citizens to foster growth in the state's economy. The Task Force was created by the Management Council at its March 23 meeting to examine rules, regulations, statutes, and processes affecting the mining, agriculture, and construction industries." Public comments submitted prior to Sept. 11, 2023, can be considered by the Task Force at its next meeting. To access public comment resources and to learn more about the Task Force, [Read more.](#)

STATE – Regulatory

Governor Newsom Appoints First Oil Watchdog

Czar – California. On August 1, Gov. Gavin Newsom (D) announced that “Tai Milder, a seasoned antitrust prosecutor, will lead the Division of Petroleum Market Oversight – the new office established by Governor Newsom’s gas price gouging law – to investigate price gouging and hold Big Oil accountable.” Newsom calls Milder’s appointment as “the first Director of the Division of Petroleum Market Oversight within the California Energy Commission (CEC), a major milestone in the state’s efforts to hold Big Oil accountable following last year’s record gasoline price spikes.” As noted by the California Independent Petroleum Association, the “announcement comes as the CEC is unveiling a [new interactive dashboard](#) with a stated goal of ‘increasing transparency’ within the oil and gas industry. The dashboard, which has data from January 1999 to present, has a detailed price breakdown of costs, taxes, and fees for a gallon of gasoline. It also has estimated gross margins for refiners and distributors, which is one of many indicators that can be used to look at how the petroleum market in California is operating.”

[Read more.](#)

Bonding and Financial Security Requirements –

California. On July 31, the California Geologic Energy Management Division (CalGEM) issued a notice to operators to inform them that CalGEM is implementing the requirements that were added to the state code in 2019 by [Assembly Bill 1057](#), “which intended to address concerns that as oil production continues to decline, oil and gas infrastructure could be orphaned, potentially leaving taxpayers to address the risks and cover the costs of plugging and abandoning wells, decommissioning attendant facilities, and remediating sites.” According to CalGEM, “This statute authorizes CalGEM to require operators to provide additional financial security beyond the statutory minimums established in [PRC §3204](#) based on CalGEM’s evaluation of the risk that an operator may desert its wells and the potential threats the operator’s wells pose to life, health, property, and natural resources. The required amount of additional security will be

based on CalGEM’s estimation of the reasonable costs to the State for properly plugging and abandoning all the operator’s wells and decommissioning any attendant production facilities in accordance with [PRC § 3208](#), or \$30 million, whichever is less.” Regarding the notice, the California Independent Petroleum Association (CIPA) “was encouraged that CalGEM adopted several of the suggestions CIPA offered for consideration. First, CalGEM lists a sinking fund as an acceptable means of financial assurance. This would allow operators to contribute over time to cover their well remediation costs in the future. Instead of sending premiums to Wall Street surety companies, the money set aside by operators would instead go into an interest-bearing account and would be available to the operator for the purpose it is intended—the plugging and abandonment of their wells over time. This would dovetail quite well with the state’s robust Idle Well Management Plan Program. Second, the NTO states that CalGEM will accept ‘a binding work plan to reduce asset retirement obligations’ allowing operators to meet their obligations over time.” One drawback noted by CIPA is that the notice “still suggests CalGEM will be using estimates of how much it would cost the state, not operators, to remediate wells” but a separate notice will follow on this topic, according to CIPA, and CIPA “has informed CalGEM that objections will be made to avoid falsely inflated numbers to set risk calculations. CIPA will protest any proposed regulations that only use state costs of well remediation, which are strikingly higher than the same work done by CIPA producers.” [Read more.](#)

Governor Approves State Exit from Regional

Greenhouse Gas Initiative – Virginia. (*Update to 6/12/23 Report*) On July 31, Gov. Glenn Youngkin (R) approved the state’s withdrawal from the Regional Greenhouse Gas Initiative (RGGI). In response, environmental groups have already threatened lawsuits. [Read more.](#) For background, on June 7, Virginia’s State Air Pollution Control Board voted 4-3 “to exit a regional carbon emissions reduction program, a move backed by Gov. Glenn Youngkin (R) but rebuked by the state General Assembly.” That vote moved Virginia one step closer towards withdrawing

from the RGGI, “a program that issues tradable carbon-dioxide allowances and limits power plant emissions in participating states. Other participating states include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.” The Democrat-controlled General Assembly voted to join the RGGI in 2020 under Gov. Youngkin’s predecessor, Gov. Ralph Northam (D). In June, Gov. Youngkin hailed the Board’s vote saying, “The Office of the Attorney General has confirmed the State Air Pollution Control Board has the legal authority to take action on the regulatory proposal using the full regulatory process – and today, the Board voted to do just that – furthering Virginians access to a reliable, affordable, clean and growing supply of power.”

[Read more.](#)

STATE – Judicial

Monterey County Oil and Gas Drilling Ban – California. On August 3, the California Supreme Court issued its long-awaited opinion in *Chevron U.S.A. Inc. v. County of Monterey* (Case No. S271869), delivering a victory for the oil and gas industry by ruling that Monterey County cannot enforce a voter-approved ban on new oil and gas wells. For background, in 2016, Protect Monterey County sponsored, and Monterey County voters passed, “Measure Z,” which is “a local ordinance that bans oil and gas wastewater injection and impoundment and the drilling of new oil and gas wells throughout the County’s unincorporated areas.” Chevron, other oil producers, and mineral rights holders filed six actions against the county “challenging Measure Z on various grounds, including state and federal preemption.” The trial court entered judgment in favor of plaintiffs on the state and federal preemption claims. On appeal, the judgment was affirmed in favor of the oil and gas litigants. On review before the California Supreme Court, the court was charged with deciding whether state law preempts Measure Z. The court concluded that it does because Measure Z is contradictory to it. In short, the ruling provides that the state, not the county, has the authority to regulate certain methods of oil production that would have been banned by the county measure.

Accordingly, the court affirmed the judgment of the appellate court. [Read more.](#)

Hydraulic Fracturing Equipment Tax Exemption – Ohio. On August 2, the Ohio Supreme Court issued an opinion regarding whether certain hydraulic fracturing equipment is subject to Ohio’s sales and use tax in *Stingray Pressure Pumping, L.L.C. v. Harris* (Case No. 2023-Ohio-2598). The court stated that “Generally, Ohio exempts from taxation equipment used directly in the production of oil and gas. But not everything that is involved in oil and gas production qualifies for the exemption.” In this case, a taxpayer challenged a decision of the Ohio Board of Tax Appeals (BTA) “concluding that some of its equipment does not qualify for the exemption.” Here, the court rendered “a mixed verdict,” holding “that most of the equipment at issue is exempt from taxation and overrule the BTA as to these items. But we agree that one item is subject to taxation. So, we affirm in part and reverse in part.” As reported by *Bloomberg Government*, “The court rejected the Ohio Tax Commissioner’s argument that the items don’t qualify under the state’s exemption for equipment used ‘directly’ in the production of oil and gas because their primary function is to hold or store chemicals. The equipment is undoubtedly used in hydraulic fracturing but also has a storage or delivery function, the court said. Indeed, numerous everyday items have storage, holding, or delivery functions in addition to other functions, it said. Flashlights hold batteries and squirt guns store water, but those wouldn’t be considered their primary functions, it said.” The case arose from the state assessing “over \$3.6 million in tax, interest, and penalties on 60 pieces of equipment Stingray bought for its fracking operations. The commissioner later canceled half of the assessments, finding the pieces of equipment were covered by the exemption.” [Read more.](#)

INDUSTRY NEWS FLASH

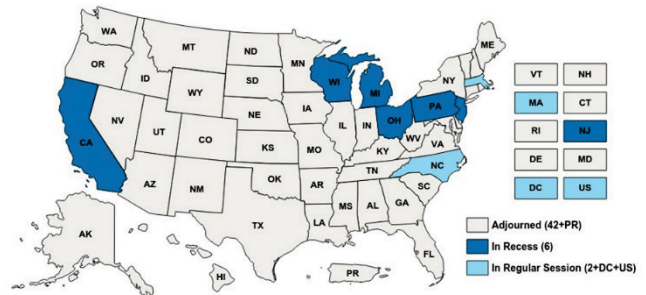
► **Biden administration delays plans to replenish the Strategic Petroleum Reserve.** In early August, the Biden administration announced it is delaying plans to restock the nation's Strategic Petroleum Reserve. "The Energy Department canceled a planned purchase of 6 million barrels for the strategic reserve [...] saying it wants to secure a good deal for taxpayers. The administration said it remains committed to refilling the reserve." [Read more.](#)

► **Boston bans fossil fuels in new construction and major renovations of city buildings.** On July 31, Boston Mayor Michelle Wu (D) signed an executive order "banning the use of fossil fuels in new construction and major renovations of city buildings. The executive order eliminates the use of common energy sources such as natural gas and heating oil in new municipal buildings. It also bars their use in renovations that affect 75% or more of a building's square footage. Any project that replaces a building's HVAC system, hot water system or cooking equipment also must eliminate fossil fuel sources and combustion." For now, the executive order only applies to public buildings, and not private projects. [Read more.](#)

► **Saudi Arabia to extend oil production cuts.** On August 3, Saudi Arabia announced it "will again extend an oil production cut of 1 million barrels per day, keeping the supply down for another month. The cut's extension into September was announced by the official Saudi Press Agency, which said it was done as part of an effort to support 'the stability and balance of oil markets.'" The cut was originally announced for July and was extended through August. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: North Carolina is in regular session. The **U.S. Congress** is out of session in the August summer recess. The **U.S. Senate** is back in regular session on September 5, 2023, and the **U.S. House of Representatives** is back in regular session on September 12, 2023. [Read more.](#)

The following states are in recess until the dates provided: **California** (August 14), **Michigan** (August 22), **Wisconsin** (September 12), **Ohio** (September 13), the **Pennsylvania** Senate (September 18) and House (September 26), and **New Jersey** (November 14).

Signing Deadlines (by date): **Arizona** Democratic Gov. Katie Hobbs had until August 11 to act on legislation or it becomes law without signature. **California** Democratic Gov. Gavin Newsom has 12 days from presentment to act on legislation or it becomes law without signature. However, if the 12th day falls on a weekend or holiday the period is extended to the next day that is not a weekend or holiday. **Michigan** Democratic Gov. Gretchen Whitmer has 14 days to act on legislation or it becomes law without signature. **Pennsylvania** Democratic Gov. Josh Shapiro has 10 days from presentment to act on legislation or it becomes law without signature.

The following states are currently holding 2023 interim committee hearings or studies: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Georgia](#), [Hawaii](#), [Idaho](#), [Illinois](#) House, [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#),

Mississippi [House](#) and [Senate](#), Missouri [House](#) and [Senate](#), [Montana](#), [Nevada](#), New Hampshire [House](#) and [Senate](#), [New Mexico](#), New York [Assembly](#), [North Dakota](#), [Oklahoma House](#), [Rhode Island](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Utah](#), [Vermont](#), [Virginia House](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2023 bill drafts, pre-files and interim studies: [Florida Senate](#), [Georgia](#), [Iowa](#), [Nevada](#) and [Utah](#). ■

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