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CRWI Update January 31, 2026

Major source reclassification rule

Between the Biden and Trump administrations, the major source reclassification rule has seen a number of amendments. Prior to 2020, EPA has relied on a 1995 policy memo that a source could change from a major source to an area source at any time up until its compliance date. After that date, it would remain a major source no matter what its emissions were. This was known as the “once in, always in” policy. In 2020, EPA finalized a rule that would allow a facility to reclassify as an area source at any time as long as its potential-to-emit would meet the area source definition.

Environmental groups challenged that rule but before this litigation could be completed, the Biden Administration added provisions to any source that reclassified and the litigation was put on hold. During the second Trump Administration, Congress passed a resolution of disapproval under the Congressional Review Act for the Biden amendments and the President signed that resolution. This effectively removed the Biden amendments. On January 2, 2026, the Agency codified that resolution and revised the Code of Federal Regulations to reflect Congress’ intent. The 2026 *Federal Register* notice restarted the litigation on the 2020 rule. Opening briefs were filed on January 23, 2026.

EPA FY 2026 funding

Congress has passed and the president has signed funding legislation (H.R.6938) giving EPA \$8.8 billion for FY 2026. This is slightly lower than what was appropriated in FY 2025 but significantly higher than the \$4.7 billion requested by the Administration. The legislation also continues funding to several programs that EPA has or is attempting to eliminate. For example, the legislation provides \$33 million for the Energy Star program, \$1.1 billion for state grants, \$30 million for environmental justice enforcement, and \$28.5 million to assist small and disadvantaged communities.

While the Senate version of the legislation had a strong condemnation of the dismantling of the Office of Research and Development (ORD), the final bill was much less stringent. The final language told EPA to “maintain staffing levels in order to fulfill the mission and statutory obligations of the agency.” Most

observers think this language is too vague to have a significant modification to the announced plans to reduce the size and programs of ORD. In addition, the last continuing resolution contained a ban on further reductions in force until January 30, 2026. Since that deadline has passed and the appropriations legislation for FY 2026 does not contain language requiring the Administration to keep ORD intact, most observers expect the Agency to move forward with eliminating ORD. One thing that may slow this down is that EPA has already lost about a quarter of its staff in the last year due to reductions in force, resignations and retirement offers, hiring restrictions, and attrition due to low morale. They started 2025 with about 16,000 employees. The Administrator need a certain level of staffing to implement his agenda.

PFAS

The Texas Commission on Environmental Quality has released a draft toxicological evaluation for perfluorodecanoic acid and its salts. A copy can be found at <https://www.tceq.texas.gov/downloads/toxicology/dsd/proposed/pfdaproposed.pdf>. Comments will be accepted until April 10, 2026.

A number of groups have been pushing for EPA to list some or all PFAS compounds as hazardous air pollutants (HAP) under the Clean Air Act. In 2024, North Carolina, New Jersey and New Mexico filed a formal petition requesting the Agency list perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorononanoic acid (PFNA), and hexafluoropropylene oxide dimer acid (Gen-X) as HAPs. EPA has not responded to that petition. In the previous Congress and in this Congress, a bipartisan group of representatives have introduced legislation requiring EPA to list all organo-fluorides with at least one fully fluorinated carbon as HAPs. It did not advance in the last Congress and is not likely to do so in this Congress. EPA proposed a rule to set up a structure for adding compounds to the list of HAPs in 2023. That rule has been moved to the long-term action list. Unless something changes, it does not appear that any work will be done on adding PFAS compounds to the list of HAPs in 2026.

In 2024, EPA set maximum contamination levels (MCL) for six per- and polyfluoroalkyl substances (PFAS) under the Safe Drinking Water Act. The Trump Administration decided to defend the PFOA and PFOS MCLs but would revise the limits for the other four (Gen-X, PFNA, perfluorohexane sulfonic acid, and perflurobutane sulfonic acid). In September 2025, the Agency filed a motion with the court asking for partial vacatur of the four scheduled for revision. On January 21, 2026, the court denied EPA's motion. Thus, the current requirements stay in place until EPA can go through the rule making process to revise those four MCLs. EPA will continue to defend the MCLs for PFOA and PFOS.

Section 343 of the 2022 National Defense Authorization Act requires the Department of Defense to file an annual report with Congress on the incineration of PFAS containing waste materials. The latest report was filed in December 2025 (cleared for release to the public on January 9, 2026). From 2023 until 2024, DoD sent 61,434 pounds of PFAS containing materials to three hazardous waste incinerators (Aragonite, El Dorado,

and East Liverpool). The report also states that the DoD PFAS Task Force is updating DoD's disposal guidance based on recent research efforts. A copy of the report can be obtained from CRWI.

Permit reform legislation

In the December 2025 Update, CRWI reported that four permitting related bills (H.R. 161, H.R. 4214, H.R. 4218, and H.R. 6387) were approved by the Energy and Commerce Subcommittee on the Environment. On January 21, 2026, the full committee approved all four and sent them to the House floor for consideration. All votes were along party lines. It is not clear if any will see floor action or if they will get passed. Before any permit reform legislation will be considered by the Senate, it will need support from several Democrats. One of the reasons raised by Democrat for lack of support is the White House's canceling previously approved renewable energy projects.

Partial shutdown

The current continuing resolution expired on January 30, 2025. There are six government department that do not have FY 2026 funding and officially shut down on midnight of the 30th. This partial shutdown will likely not last long. The Senate passed a package to fund five government agencies and a continuing resolution to fund the Department of Homeland Security for two weeks. The House will not take either up until they return on Monday, February 2, 2026. It appears likely that the House will approve the five department package and the continuing resolution shortly after they return (probably on Tuesday the 2nd). The continuing resolution for Homeland Security funding will give both chambers another two weeks to resolve their differences. Democrats are rallying around a message to restrict Immigration and Customs Enforcement actions.

Affirmative defense litigation

In September 2025, the U.S. Appeals Court for the District of Columbia Circuit modified previous opinions and ruled that EPA has the authority under the Clean Air Act to allow the use an affirmative defense for incidents where facility has no control of the situation. Environmental groups opposing this ruling filed a motion asked for an *en banc* review (all judges in the circuit would review the opinion). On January 2, 2026, the court denied the petition. Unless the groups wish to ask the Supreme Court to review this case (highly unlikely), the September 2025 ruling stands and EPA is free to use an affirmative defense in certain circumstances.

CRWI meetings

The next CRWI meeting will be held on February 18-19, 2026, in Washington, D.C. (Veolia, 701 Pennsylvania Ave NW). Please contact CRWI (703-431-7343 or mel@crwi.org) if you are interested in attending.