Message

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Sent: 3/28/2017 7:54:11 PM
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CC: So, Katherine [so.katherine@epa.gov]
Subject: RE: Clean Power Plan 3/28/17

Below: New York Times, AP, Reuters, Bloomberg, Politico, The Hill, E&E News (2), Huffington Post, USA Today, CNN, Mashable, Gizmodo, Daily Caller, BNA, Wall Street Journal, BBC, Reuters, Politico (2), E&E News (3), CNN, Huffington Post, Washington Times (3/27), Washington Post (3/27), The Hill (2) (3/27), InsideEPA (3/27), Washington Examiner (3/27), Mother Jones (3/27)

New York Times
https://www.nytimes.com/2017/03/28/climate/trump-executive-order-climate-change.html
Trump Signs Executive Order Unwinding Obama Climate Policies
By Coral Davenport 3/28/17

WASHINGTON — President Trump signed on Tuesday a much-anticipated executive order intended to roll back most of President Barack Obama's climate-change legacy, celebrating the move as a way to promote energy independence and to restore thousands of lost coal industry jobs.

Flanked by coal miners at a ceremony at the Environmental Protection Agency, Mr. Trump signed a short document titled the "Energy Independence" executive order, directing the agency to start the legal process of withdrawing and rewriting the Clean Power Plan, the centerpiece of Mr. Obama's policies to fight global warming.

The order also takes aim at a suite of narrower but significant Obama-era climate and environmental policies, including lifting a short-term ban on new coal mining on public lands.

The executive order does not address the United States' participation in the 2015 Paris Agreement, the landmark accord that committed nearly every country to take steps to reduce climate-altering pollution. But experts note that if the Trump program is enacted, it will all but ensure that the United States cannot meet its clean air commitments under the accord.

Mr. Trump advertised the moves as a way to decrease the nation's dependence on imported fuels and revive the flagging coal industry.

This action by Trump places the U.S. completely out of step with most of the rest of the world in regard to climate change.

Trump's the president and we're not. He issued the order simply because President Obama promoted it. As Trump is a Republican, if President...

This country needs to develop a coal-powered pickup truck. It would be a win-win-win for everyone involved. Pickup trucks are very popular...

But energy economists say the order falls short of both of those goals — in part because the United States already largely relies on domestic sources for the coal and natural gas that fires most of the nation's power plants.

"We don't import coal," said Robert N. Stavins, an energy economist at Harvard University. "So in terms of the Clean Power Plan, this has nothing to do with so-called energy independence whatsoever."

Scott Pruitt, the E.P.A. administrator, said in an interview on ABC News on Sunday that the order will help the United States "be both pro-jobs and pro-environment."

But coal miners should not assume their jobs will return if Trump's regulations take effect.

The new order would mean that older coal plants that had been marked for closing would probably stay open for a few years longer, extending the demand for coal, said Robert W. Godby, an energy economist at the University of Wyoming.

But even so, "the mines that are staying open are using more mechanization," he said.

"They're not hiring people," he continued.

"So even if we saw an increase in coal production, we could see a decrease in coal jobs," he added.

Legal experts say it could take years for the Trump administration to unwind the Clean Power Plan, which has not yet been carried out because it has been temporarily frozen by a Supreme Court order. Those regulations sought to cut planet-warming carbon dioxide pollution from coal-fired power plants. If enacted, they would have shut down hundreds of those plants, frozen construction of future plants and replaced them with wind and solar farms and other renewable energy sources.

Throughout his campaign, Mr. Trump highlighted his support of coal miners, holding multiple rallies in coal country and vowing to restore lost jobs to the flagging industry. At a rally last week in Kentucky, Mr. Trump vowed that his executive order would "save our wonderful coal miners from continuing to be put out of work."

While coal mining jobs have dropped in the United States, they do not represent a significant portion of the American economy. Coal companies employed about 65,971 miners in 2015, down from 87,755 in 2008, according to Energy Department statistics.

And though the percentage of coal mining jobs dropped sharply, economists said that was not driven by the Clean Power Plan. Rather, they blamed two key forces: an increase in the production of natural gas, which is a cheaper, cleaner-burning alternative to coal, and an increase in automation, which allowed coal companies to produce more fuel with fewer employees. The rollback of Mr. Obama's regulations will not change either of those forces, economists say.

"The problem with coal jobs has not been CO_2 regulations, so this will probably not bring back coal jobs," Mr. Godby said. "The problem has been that there has not been market demand for coal."

The coal industry nonetheless cheered the move.

"These actions are vital to the American coal industry, to our survival, and to getting some of our coal families back to work," said Robert E. Murray, the chief executive of Murray Energy, one of the nation's largest coal mining companies.

But even Mr. Murray conceded that he did not expect Mr. Trump's order to return coal mining numbers to their former strength. "I really don't know how far the coal industry can be brought back," he said.

Mr. Trump's directive also eliminates about a half-dozen of Mr. Obama's smaller executive orders and memorandums related to combating climate change.

For example, the order would require White House economists to recalculate a budgeting metric known as the social cost of carbon that, under the Obama administration, limited pollution by arguing that global warming outweighed economic benefits for industries. It would also eliminate a requirement that federal agencies consider the impact on climate change when analyzing all future environmental permits.

Combined, the measures are likely to ensure the United States' emissions of planet-warming pollution remain too high to meet the terms of the Paris climate accord.

The aim of the Paris deal is to reduce emissions enough to stave off a warming of the planet by more than 3.6 degrees Fahrenheit, the level at which, experts say, the Earth will be irrevocably locked into a future of extreme droughts, flooding and shortages of food and water.

But analysts say Mr. Trump's order signals that the United States will not meet its pledges under the Paris deal to cut its emissions about 26 percent from 2005 levels by 2025.

"Meeting the U.S. terms of the Paris Agreement would require full enforcement of the current regulations, plus additional regulations," said Michael Oppenheimer, a climate scientist at Princeton University. "It takes a comprehensive effort involving every country doing what they committed to and more."

He said Mr. Trump's order "sends a signal to other countries that they might not have to meet their commitments — which would mean that the world would fail to stay out of the climate danger zone."

AP
http://hosted.ap.org/dynamic/stories/U/US_TRUMP_CLIMATE_PLAN?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2017-03-28-08-51-48
Trump puts anti-global warming projects on chopping block
By Matthew Daly and Jill Colvin 3/28/17 2:58PM

WASHINGTON (AP) -- Declaring "the start of a new era" in energy production, President Donald Trump signed an executive order Tuesday that he said would revive the coal industry and create jobs.

The move makes good on his campaign pledge to unravel former President Barack Obama's plan to curb global warming. The order seeks to suspend, rescind or flag for review more than a half-dozen measures in an effort to boost domestic energy production in the form of fossil fuels.

Environmental activists, including former Vice President Al Gore, denounced the plan. But Trump said the effort would allow workers to "succeed on a level playing field for the first time in a long time."

"That is what this is all about: bringing back our jobs, bringing back our dreams and making America wealthy again," Trump said, during a ceremony at the Environmental Protection Agency headquarters, attended by a number of coal miners.

The order initiates a review of the Clean Power Plan, which restricts greenhouse gas emissions at coal-fired power plants. The regulation, which was the former president's signature effort to curb carbon emissions, has been the subject of long-running legal challenges by Republican-led states and those who profit from burning oil, coal and gas.

But just as Obama's climate efforts were often stymied by legal challenges, environmental groups are promising to fight Trump's pro-fossil fuel agenda in court.

Trump has called global warming a "hoax" invented by the Chinese, and has repeatedly criticized the power-plant rule as an attack on American workers and the struggling U.S. coal industry.

In addition to pulling back from the Clean Power Plan, the administration will also lift a 14-month-old moratorium on new coal leases on federal lands.

The Obama administration had imposed a three-year moratorium on new federal coal leases in January 2016, arguing that the $1 billion-a-year program must be modernized to ensure a fair financial return to taxpayers and address climate change.

Trump accused his predecessor of waging a "war on coal" and boasted in a speech to Congress that he has made "a historic effort to massively reduce job-crushing regulations," including some that threaten "the future and livelihoods of our great coal miners."

The order will also chip away at other regulations, including scrapping language on the "social cost" of greenhouse gases. It will initiate a review of efforts to reduce the emission of methane in oil and natural gas production as well as a Bureau of Land Management hydraulic fracturing rule, to determine whether those reflect the president's policy priorities.

It will also rescind Obama-era executive orders and memoranda, including one that addressed climate change and national security and one that sought to prepare the country for the impacts of climate change.

The administration is still in discussion about whether it intends to withdraw from the Paris Agreement on climate change.

Trump's order could make it more difficult, though not impossible, for the U.S. to achieve its carbon reduction goals. The president's promises to boost coal jobs run counter to market forces, such as U.S. utilities converting coal-fired power plants to cheaper, cleaner-burning natural gas.

Trump's Environmental Protection Agency chief, Scott Pruitt, alarmed environmental groups and scientists earlier this month when he said he does not believe carbon dioxide is a primary contributor to global warming. The statement is at odds with mainstream scientific consensus and Pruitt's own agency.

The overwhelming majority of peer-reviewed studies and climate scientists agree the planet is warming, mostly due to man-made sources, including carbon dioxide, methane, halocarbons and nitrogen oxide.

Opponents say Obama's effort would have killed coal-mining jobs and driven up electricity costs. The Obama administration, some Democratic-led states and environmental groups counter that it would spur thousands of clean-energy jobs and help the U.S. meet ambitious goals to reduce carbon pollution set by the international agreement signed in Paris.

Trump's order on coal-fired power plants follows an executive order he signed last month mandating a review of an Obama-era rule aimed at protecting small streams and wetlands from development and pollution. The order instructs the EPA and Army Corps of Engineers to review a rule that redefined "waters of the United States" protected under the Clean Water Act to include smaller creeks and wetlands.

While Republicans have blamed Obama-era environmental regulations for the loss of coal jobs, federal data shows that U.S. mines have been shedding jobs for decades under presidents from both parties as a result of increasing automation

and competition from natural gas, which has become more abundant through hydraulic fracturing. Another factor is the plummeting cost of solar panels and wind turbines, which now can produce emissions-free electricity cheaper than burning coal.

According to an Energy Department analysis released in January, coal mining now accounts for fewer than 75,000 U.S. jobs. By contrast, renewable energy - including wind, solar and biofuels - now accounts for more than 650,000 U.S. jobs.

The Trump administration's plans drew praise from business groups and condemnation from environmental groups.

U.S. Chamber of Commerce President Thomas J. Donohue praised the president for taking "bold steps to make regulatory relief and energy security a top priority."

"These executive actions are a welcome departure from the previous administration's strategy of making energy more expensive through costly, job-killing regulations that choked our economy," he said.

Former Vice President Al Gore blasted the order as "a misguided step away from a sustainable, carbon-free future for ourselves and generations to come."

"It is essential, not only to our planet, but also to our economic future, that the United States continues to serve as a global leader in solving the climate crisis by transitioning to clean energy, a transition that will continue to gain speed due to the increasing competiveness of solar and wind," he said in a statement.

Reuters
http://www.reuters.com/article/us-usa-trump-energy-idUSKBN16Z1L6
Trump signs order sweeping away Obama-era climate policies
By Valerie Volcovici and Jeff Mason 3/28/17, 2:48PM

U.S. President Donald Trump signed an executive order on Tuesday to undo a slew of Obama-era climate change regulations that his administration says is hobbling oil drillers and coal miners, a move environmental groups have vowed to take to court.

The decree's main target is former President Barack Obama's Clean Power Plan that required states to slash carbon emissions from power plants - a critical element in helping the United States meet its commitments to a global climate change accord reached by nearly 200 countries in Paris in 2015.

The so-called "Energy Independence" order also reverses a ban on coal leasing on federal lands, undoes rules to curb methane emissions from oil and gas production, and reduces the weight of climate change and carbon emissions in policy and infrastructure permitting decisions.

"I am taking historic steps to lift restrictions on American energy, to reverse government intrusion, and to cancel job-killing regulations," Trump said at the Environmental Protection Agency headquarters, speaking on a stage lined with coal miners.

The wide-ranging order is the boldest yet in Trump's broader push to cut environmental regulation to revive the drilling and mining industries, a promise he made repeatedly during the presidential campaign. But energy analysts and executives have questioned whether the moves will have a big effect on their industries, and environmentalists have called them reckless.

"I cannot tell you how many jobs the executive order is going to create but I can tell you that it provides confidence in this administration's commitment to the coal industry," Kentucky Coal Association president Tyler White told Reuters.

Trump signed the order with EPA Administrator Scott Pruitt, Interior Secretary Ryan Zinke, Energy Secretary Rick Perry and Vice President Mike Pence by his side.

U.S. presidents have aimed to reduce U.S. dependence on foreign oil since the Arab oil embargo of the 1970s, which triggered soaring prices. But the United States still imports about 7.9 million barrels of crude oil a day, almost enough meet total oil demand in Japan and India combined.

While Trump's administration has said reducing environmental regulation will create jobs, some green groups have countered that rules supporting clean energy have done the same.

The number of jobs in the U.S. wind power industry rose 32 percent last year while solar power jobs rose by 25 percent, according to a Department of Energy study.

'ASSAULT ON AMERICAN VALUES'

Environmental groups hurled scorn on Trump's order, arguing it is dangerous and goes against the broader global trend toward cleaner energy technologies.

"These actions are an assault on American values and they endanger the health, safety and prosperity of every American," said billionaire environmental activist Tom Steyer, the head of activist group NextGen Climate.

Green group Earthjustice was one of many organizations that said it will fight the order both in and out of court. "This order ignores the law and scientific reality," said its president, Trip Van Noppen.

An overwhelming majority of scientists believe that human use of oil and coal for energy is a main driver of climate change, causing a damaging rise in sea levels, droughts, and more frequent violent storms.

But Trump and several members of his administration have doubts about climate change, and Trump promised during his campaign to pull the United States out of the Paris climate accord, arguing it would hurt U.S. business.

Since being elected Trump has been mum on the Paris deal and the executive order does not address it.

Christiana Figueres, former executive secretary of the United Nations Framework Convention on Climate Change who helped broker the Paris accord, lamented Trump's order.

"Trying to make fossil fuels remain competitive in the face of a booming clean renewable power sector, with the clean air and plentiful jobs it continues to generate, is going against the flow of economics," she said.

The order will direct the EPA to start a formal "review" process to undo the Clean Power Plan, which was introduced by Obama in 2014 but was never implemented in part because of legal challenges brought by Republican-controlled states. The Clean Power Plan required states to collectively cut carbon emissions from power plants by 32 percent below 2005 levels by 2030.

Some 85 percent of U.S. states are on track to meet the targets despite the fact the rule has not been implemented, according to Bill Becker, director of the National Association of Clean Air Agencies, a group of state and local air pollution control agencies.

Trump's order also lifts the Interior Department's Bureau of Land Management's temporary ban on coal leasing on federal property put in place by Obama in 2016 as part of a review to study the program's impact on climate change and ensure royalty revenues were fair to taxpayers.

It also asks federal agencies to discount the cost of carbon in policy decisions and the weight of climate change considerations in infrastructure permitting, and reverses rules limiting methane leakage from oil and gas facilities.

Bloomberg
https://www.bloomberg.com/politics/articles/2017-03-28/trump-to-cancel-obama-s-policies-aimed-at-paris-climate-pledge

Trump Sweeps Away Climate Rules Vowing 'New Energy Revolution'
By Jennifer A Dlouhy 3/28/17 2:58PM

President Donald Trump moved aggressively to undo his predecessor's carbon-cutting commitments, promising "a new energy revolution" that would unleash America's abundant fossil-fuel resources.

Flanked by coal miners, Trump signed an executive order Tuesday that begins unraveling a raft of rules and directives to combat climate change, which President Barack Obama wove into the fabric of the federal government as he made addressing the issue a centerpiece of his second term.

"My administration is putting an end to the war on coal," Trump said, highlighting the coming rollback of Obama's Clean Power Plan, a rule that discouraged utilities from using the fossil fuel to generate electricity. "Perhaps no single regulation threatens our miners, energy workers and companies more than this crushing attack on American industry."

Trump, who once called climate change a hoax, has vowed to reorient the federal government so that U.S. oil and coal producers thrive, while manufacturers aren't burdened by "job-killing" restrictions -- a commitment he reiterated Tuesday at the Environmental Protection Agency. The U.S. is "ending the theft of American prosperity," he said.

He stopped short of withdrawing the U.S. from the landmark Paris accord on climate change negotiated by his predecessor. Aides say that is still being discussed, even as the steps he took would make it hard for the nation to keep its commitment.

Some changes will happen immediately, such as the repeal of a 2016 policy that encouraged federal regulators to consider climate change in environmental reviews as well as directives from Obama that compelled government agencies and the military to factor the phenomenon into their planning. The Interior Department also will swiftly rescind a moratorium on the sale of new rights to extract coal on federal land.

And the Trump administration also is tossing an Obama-era "social cost of carbon" metric that estimated the potential economic damage from climate change and was used to justify a slew of environmental actions, from efficiency standards for microwave ovens to the revamp of government buildings. Instead, the government will return to an earlier 2003 approach for estimating the potential costs of any regulations governing greenhouse gas emissions.

Other policy pivots will take years of work, such as reversing the Clean Power Plan that forced states to cut greenhouse gas emissions from electricity. An Interior Department rule setting requirements for hydraulic fracturing on federal land will be rescinded. And a pair of regulations governing potent methane emissions from oil and gas wells also will be reviewed at the Environmental Protection Agency and the Interior Department -- with possible changes or a reversal years away.

Most -- if not all -- of the changes will face legal challenges from the same environmentalists who already are fighting to defend Obama's Clean Power Plan in federal court.

"In taking a sledgehammer to U.S. climate action, the administration will push the country backward, making it harder and more expensive to reduce emissions," Andrew Steer, president of the World Resources Institute, said in an emailed statement. "Climate science is clear and unwavering: mounting greenhouse gas emissions are warming our planet, putting people and business in harm's way."

Agencies will have to justify their regulatory reversals and submit the proposed changes to public comment. And saying climate change isn't real won't cut it, said Gina McCarthy, the former EPA administrator who drove many of the mandates now on the chopping block.

"They are going to have to figure out a lot better argument than that," McCarthy said in a phone interview.

Unwinding some mandates will be tougher than others, notes Victor Flatt, co-director of the Center for Climate, Energy, Environment and Economics at the University of North Carolina School of Law.

"According to the Supreme Court, all actions by federal agencies, including rulemakings, must be made on the basis of evidence, and may not be arbitrary and capricious or an abuse of discretion," Flatt said by email.

"Having established a deep base of evidence in support of these rules, the EPA can't simply say it changed its mind. It'll need new evidence, new analysis, new public comments, a new cost-benefit analysis, and in all likelihood, new litigation."

Trump's order was cheered by some conservatives who have been pushing the president to go even further in stripping climate regulations from the rulebooks, including by undoing the EPA's landmark declaration that greenhouse gas emissions jeopardize the public health and welfare. That 2009 endangerment finding served as the underpinning for later EPA carbon rules.

Myron Ebell, director of the Competitive Enterprise Institute's Center for Energy and Environment, cast Trump's executive order as a good start.

"It takes the necessary first steps in undoing President Obama's energy-rationing agenda," Ebell said by email. "Of course, there is more work to be done down the road, most importantly withdrawing from the Paris climate treaty and reopening the endangerment finding."

The Trump administration hasn't said if the U.S. will remain a part of that 2015 Paris climate accord -- despite the president's campaign pledges to rip up the deal that set broad, non-binding carbon-cutting targets for the U.S. and nearly 200 other countries.

Secretary Tillerson

Secretary of State Rex Tillerson has advocated the U.S. keep its seat at the table by sticking with the plan. Even without formally pulling out of the Paris pact, the U.S. is abandoning its pledge to pay $3 billion into a United Nations fund to help countries on the front lines of climate change.
Trump's actions are politically significant, following months of promises to reverse the fortunes of struggling coal miners -- campaign vows that helped propel him to victory in industrial strongholds like West Virginia and Pennsylvania. Although the changes he is setting in motion will make it cheaper to extract coal and use it to generate electricity, they are unlikely to dramatically boost domestic demand for coal, which faces stiff competition from cheap natural gas and is affected by other pollution regulations untouched by Trump's order.

And mining jobs have been in decline for decades as automated equipment increasingly unearths coal, doing the work that once required pick axes and mules.

Even before the Obama administration imposed the coal-leasing moratorium in January 2016, coal producers had little interest in adding new federal reserves to their portfolios, amid slumping domestic demand. Existing federal leases contain at least 20 years' worth of coal, according to Interior Department estimates.

It was not immediately clear Monday whether Trump's Interior Department would continue a broad review of the federal coal leasing program even as it restarts sales; that analysis is already about a third complete, with regulators unveiling a broad blueprint of possible changes earlier this year.

Sierra Club Executive Director Michael Brune called Trump's order "the single biggest attack on climate action in U.S. history" and said it was a misguided attempt to help workers displaced by the global shift to cleaner energy sources.

"The best way to protect workers and the environment is to invest in growing the clean energy economy that is already outpacing fossil fuels and ensuring no one is left behind," Brune said in an emailed statement. "At a time when we can declare independence from dirty fuels by embracing clean energy, this action could only deepen our dependence on fuels that pollute our air, water and climate while making our kids sicker."

Legal Limbo

The EPA's Clean Power Plan was already in legal limbo, having been put on hold by the Supreme Court in February 2016, while lower court proceedings were underway. The U.S. Court of Appeals heard arguments on the challenge last September but has not ruled on the case that the Trump administration will now seek to put on hold. Environmental groups and states that support the rule and are defending it in court have vowed to fight to keep those proceedings going.

Janet McCabe, the former head of the EPA Office of Air and Radiation that helped develop the Clean Power Plan, defended the measure as a "solid, reasonable and flexible rule based on years of research and outreach that follows" an ongoing market transition toward cleaner energy. "EPA has an obligation to address carbon pollution," she said in an emailed statement. "Congress put the Clean Air Act in place to protect Americans from air pollution, and there is no doubt greenhouse gases are air pollution; the science makes that crystal clear."

Critics of the initiative said the EPA went beyond its authority under the Clean Air Act by imposing broad statewide emissions targets, rather than specific mandates for individual power plants.

"The Clean Power plan was an unprecedented power grab by the previous administration that was built on a shaky legal foundation," said Thomas Pyle, head of the American Energy Alliance, a fossil fuel-oriented free market advocacy group. "This executive order won't get rid of the regulation overnight, but it's an important first step that reaffirms President Trump's commitment to protecting American families from higher energy costs."

Politico
http://www.politico.com/story/2017/03/donald-trump-climate-change-executive-order-236597
Trump signs order to unwind Obama's climate actions
By Politico Staff 3/28/17, 2:33PM

President Donald Trump on Tuesday signed an executive order that represents his biggest effort yet to erase former President Barack Obama's legacy on climate change.
The order directs EPA to begin rolling back the Clean Power Plan, the landmark 2015 rule requiring existing power plants to curb their greenhouse gas emissions.

Also on the chopping block are a year-old coal leasing moratorium, regulations on methane emissions and fracking, White House guidance on incorporating climate change into federal projects and the "social cost of carbon," a dollar amount of damage estimated for carbon dioxide emissions.

The Hill
http://thehill.com/policy/energy-environment/326124-trump-signs-order-to-roll-back-obamas-climate-moves
Trump signs order to roll Obama's climate moves
By Timothy Cama 3/28/17, 2:28PM

President Trump on Tuesday signed a wide-ranging executive order to start the process of rolling back former President Obama's aggressive climate change agenda, promising that the measure would create jobs in the fossil fuel industry.

Trump signed the order in a ceremony at the headquarters of the Environmental Protection Agency (EPA), the agency responsible for many of the major policies being targeted.

He was flanked by coal miners — whom EPA Administrator Scott Pruitt joked "might never have been to the EPA before" — as well as cabinet officials and Vice President Mike Pence, who celebrated the executive order as a repudiation of the Obama administration's climate agenda.

"My administration is putting an end to the war on coal," Trump said, using a term coined by the industry and its supporters to describe government regulations.

"I am taking an historic step to lift the restrictions on American energy, to reverse government intrusion and to cancel job-killing regulations."

The administration is pitching the order primarily as a move to increase the nation's energy independence, with the added effect of increasing jobs in affected sectors and related industries.

Trump said the order fulfills a promise made to coal miners during his presidential campaign. He recounted a trip to West Virginia when he met with miners who told him they wanted to continue working in the industry despite a downturn in employment.

"I said, if that's what you want to do, that's what you're doing to do," Trump said.

"The miners told me about the attacks on their jobs and their livelihoods. ... I made them this promise: we will put our miners back to work."

Experts and environmental groups challenge the assertion that rolling back Obama's policies would benefit energy independence or jobs.

"Right now, clean energy jobs already overwhelm dirty fuels in nearly every state across America, and that growth is only going to continue as clean energy keeps getting more affordable and accessible by the day," Sierra Club Executive Director Michael Brune said in a statement.

"These facts make it clear that Donald Trump is attacking clean energy jobs purely in order to boost the profits of fossil fuel billionaires."

The most significant piece of the order instructs the EPA to formally consider repealing the Clean Power Plan. It was the central piece of Obama's second-term climate agenda, setting a 32 percent cut in the power sector's carbon dioxide emissions by 2030.

Federal regulators are also asked under the order to consider repealing the EPA's carbon limits for newly built power plants and methane emissions standards for oil and natural gas drilling from the EPA and the Interior Department.

It also has some immediate effects. The order stops Interior's moratorium on new coal-mining leases on federal land, something Obama instituted to study how to charge coal companies for the climate impacts of the fuel they mine on federal property.

It also stops policies asking federal agencies to consider climate change in environmental reviews, a government-wide accounting method for climate change regulations called the "social cost of carbon" and Obama executive orders on climate, like one asking that infrastructure be built to withstand a future climate affected by global warming.

Fossil fuel industries stand to benefit from the order, and many voiced their support for the measure this week.

Oil and natural gas groups, for instance, have fought back against the methane rules in court and in Congress.

But Trump and his administration have had a special affinity for the coal industry. The sector is suffering through an economic downturn due in large part to declining demand for its product, which is increasingly being replaced by cheaper and more plentiful natural gas.

Trump framed his order Tuesday as a measure to help put coal miners back to work, a promise repeated this week by administration officials like Pruitt and Interior Secretary Ryan Zinke.

"You know what this says?" Trump asked a miner before he signed the order on Tuesday. "You're going back to work."

E&E News
http://www.eenews.net/greenwire/2017/03/28/stories/1060052208
White House outlines more cuts for energy, environment
By George Cahlink 3/28/17

The White House is asking Congress to slash billions of dollars from energy and environmental programs for the last six months of fiscal 2017, beyond the already deep cuts it previously proposed for next year.

According to budget documents obtained by E&E News, the Trump administration is proposing that $1.75 billion be cut from the Energy and Water Development appropriations bill and $714 million be carved from the Interior and Environment spending measure.

Specifically, the administration would cut the Department of Energy by $1.43 billion, U.S. EPA by $247 million, the Interior Department by $371 million and the National Oceanic and Atmospheric Administration by $300 million.

The administration sent the proposals to Capitol Hill on Friday as lawmakers and the White House prepare for grinding talks over spending for the last half of fiscal 2017. A stopgap funding measure, known as a continuing resolution, expires April 28, and Congress will need to put a new spending plan in place by then or face a politically treacherous government shutdown.

The White House earlier this month said it wanted $18 billion in domestic spending cuts for fiscal 2017 to help fund a $33 billion hike in supplemental defense spending for the final six months of the year. Documents circulated this week mark the first time the administration has offered details on where those supplemental cuts would be taken, the bulk of them — about $7.25 billion — coming from the Labor, Health and Human Services, and Education spending bill.

Lawmakers are unlikely to welcome the domestic cuts that many in both parties have said are not the way to pay for Pentagon increases. Several appropriators said they would prefer the defense hike be counted as emergency spending so it would not require offsetting cuts.

House Minority Whip Steny Hoyer (D-Md.) told reporters today that proposing additional cuts to energy and environmental programs across government is a "non-starter" for the supplemental spending measure. He said Congress should stick to the two-year budget agreement passed in 2015 that sets spending caps for fiscal 2016 and 2017.
"The 'art of the deal' is keeping the deal," he said.

A Senate appropriations aide stressed the reductions were not being floated by Senate Republicans.

The proposed cuts to energy and environmental programs target efforts that President Trump has already said would be or are expected to be cut in fiscal 2018. The full budget proposal for next year is due in May.

Chopping block

Under the proposal for the rest of fiscal 2017, DOE's renewable energy and energy efficiency efforts would face the budget ax.

The administration wants to cut about 25 percent ($516 million) from the $2 billion energy efficiency and renewable energy program by decreasing grants and rescinding unobligated spending. The Advanced Research Projects Agency-Energy budget, where the department has focused on commercializing clean energy technologies, would be reduced by more than 50 percent ($150 million) from $290 million.

Fossil fuel research programs would also take a more than 50 percent hit ($341 million) from current spending of $631 million for the rest of the year. The savings would come largely by cutting research grants.

At EPA, state environmental grant programs would be cut by about 10 percent ($115 million) from $1.079 billion. The White House notes that the reduction would help the agency ease into far larger reductions of about 44 percent for those grant programs it is seeking for fiscal 2018.

Also marked for cuts would be EPA research and development programs by about 10 percent ($48 million) from $483 million. Documents say the money would come out of climate research programs and grants.

At Interior, the single largest savings would come from tapping $230 million in proceeds in the department's Southern Nevada Public Land Management account, which collects fees from public lands sales around Las Vegas. Other reductions would hit the Abandoned Mine Land Reclamation Program ($90 million) and the payment-in-lieu-of-taxes program ($51 million).

For the National Oceanic and Atmospheric Administration, the proposal would cut funding for the National Sea Grant College Program by $30 million, from its current budget of $73 million. The administration wants to completely eliminate it in fiscal 2018. The program supports research at 33 universities and is popular among both Republicans and Democrats, but the administration calls it a "lower priority research grant program that primarily benefits industry and state and local stakeholders."

Trump is also asking Congress to eliminate funding for the Pacific Coastal Salmon Recovery Fund, noting that it has collected $1 billion since 2000. NOAA has repeatedly — and unsuccessfully — tried to decrease the program's funding. Congress reliably funds it anyway, at $65 million annually.

The Trump administration's proposed cuts would represent a double hit for the agencies.
The reductions would come from current, fiscal 2017 spending, which is mostly based on fiscal 2016 levels since the government has been operating under a CR. In many cases, the current spending is lower than what agencies had sought in their fiscal 2017 budget requests.

E&E News
http://www.eenews.net/greenwire/2017/03/28/stories/1060052207
Greens search for silver linings in executive action
By Hannah Hess 3/28/17

On an otherwise dismal day for environmentalists, supporters of climate action see some silver linings for the power sector.
The centerpiece of President Trump's new energy directive, ordering U.S. EPA to review the Clean Power Plan, does not undo the Obama administration's groundwork in the effort to cut greenhouse gas emissions.

The unprecedented amount of planning, analysis and engagement that the agency conducted ahead of its rules on new and existing power plants provide a path forward for utilities and regional authorities to advance the dialogue on climate issues.

Increased energy efficiency, more renewable energy and conversations among stakeholders about how to rein in emissions can still happen — and may even be easier with the Clean Power Plan gone, said Vicki Arroyo, executive director of the Georgetown Climate Center.

"Not that I want to laud the demise of the Clean Power Plan after so many have done so much to try to bring it about, but I do think that, at least in a handful of states, it might be a bit easier for people to have these conversations without some of the partisanship and polarization we saw around the Clean Power Plan," Arroyo said at a recent forum on climate action.

Bill Becker, executive director of the National Association of Clean Air Agencies, noted that 75 percent of the states are already meeting their 2022 interim greenhouse gas targets under the Clean Power Plan, 20 percent of the states are meeting their 2030 final targets, and 85 percent of the states are on track to meet their final 2030 targets.

"The CPP lays the groundwork for ... integration of state air quality, energy and utility planning, and expanded dialogue among states and between regions of the country," Becker said today. "If the Trump executive order prevails, the CPP will, nonetheless, leave a legacy in the form of a substantial impact on states' actions to address the challenges of climate change."

Sizing up coal's role

Ahead of Trump's trip to U.S. EPA headquarters this afternoon, mining officials and oil and gas industry groups welcomed his plan to wipe out many of the Obama administration's executive orders dealing with climate change and its coal-leasing moratorium on public lands (*Greenwire*, March 27).

Hal Quinn, the National Mining Association's president and CEO, praised the action and called the Clean Power Plan "an unlawful attempt to radically transform the nation's power grid, destroying valuable energy assets and leaving our economy more vulnerable to rising power prices — all for no discernible environmental benefit."

Senate Majority Leader Mitch McConnell (R-Ky.) said Trump's action would be good news for coal communities, calling it a "victory" for middle-class families and "another important step away from the overregulation of the Obama years." McConnell also urged EPA to work with stakeholders.

American Petroleum Institute President and CEO Jack Gerard also called the executive order an "important step." Gerard said API anticipates working with the administration and Congress on "forward-looking energy policies" that help maintain U.S. leadership in the production and refining of oil and natural gas and the reduction of carbon emissions. Scott Segal, an industry lawyer at Bracewell LLP, said the executive order "can remove the shadow of a regulatory straitjacket" and replace it with market principles that would perhaps help the coal industry.

"If going-forward policy makes more accurate technological assumptions, removes clear obstacles like leasing moratoriums, and seizes the opportunity to clarify Clean Air Act applicability to efficiency improvement, coal can be advantaged by the executive order and subsequent actions," Segal said in an email.

First move of 'long chess game'

Richard Revesz, director of the Institute for Policy Integrity at the New York University School of Law, argued that the executive order has no legal significance at all when it comes to the Clean Power Plan, due to the drawn-out nature of the rulemaking process.
"This is the first move of a long chess game that will take years to unfold, and future moves will be far more challenging," Revesz said.

EPA will need to initiate a notice-and-comment rulemaking process that has many significant built-in hurdles, and when the agency promulgates its final rule, it will need to respond to potentially millions of comments.

"Then, the litigation will start, first in the D.C. Circuit and then, perhaps, in the Supreme Court. This issue might not be resolved before the 2020 election, so the fate of the Clean Power Plan might ultimately be determined by the winner of that election," Revesz said.

Environmentalists have planned an "emergency rally" this evening at Lafayette Square in front of the White House to advocate for the Clean Power Plan. Mustafa Ali, who recently left his post as EPA's assistant associate administrator for environmental justice to join the Hip Hop Caucus, will attend, along with NextGen Climate President Tom Steyer.

Another silver lining for climate action: The order is mum on whether the United States should withdraw from the Paris Agreement, under which it has pledged to cut its greenhouse gas emissions between 26 and 28 percent by 2025 compared to 2005 levels. Trump advisers are still divided on whether to withdraw (*see related story*).

"You can't just stay in the Paris Agreement, then do nothing — it requires some action," said Jon Sohn, an attorney with multinational law firm Dentons. "This would have been the ideal moment to include something about Paris, and they didn't."

By staying in the agreement, the United States would still be required to submit future targets for cutting greenhouse gas emissions and contribute to international climate finance, Sohn said.

Countries agreed at Paris to come back in 2018 to take stock of initial progress toward their collective goal and to inform new or updated targets that would be put forward by 2020. After 2020, this will be followed by "global stocktakes" every five years starting in 2023, Sohn said.

Huffington Post
http://www.huffingtonpost.com/entry/trump-climate-order_us_559aab91e4b0c706985a42be
Donald Trump's Disastrous Plan To Derail U.S. Climate Action
By Alissa Scheller and Alexander Kaufman 3/28/17, 2:35PM

President Donald Trump signed a sweeping executive order on Tuesday aimed at reversing much of former President Barack Obama's efforts to shrink the United States' carbon footprint.

The long-awaited order instructs the Environmental Protection Agency to review the Clean Power Plan, the Obama administration's signature policy for slashing greenhouse gas emissions from the utility sector, by far the country's biggest emitter. This review marks the first step toward scrapping the regulation.

"Perhaps no single regulation threatens our miners, energy workers and companies more than this crushing attack on American industry," Trump said at the 2 p.m. signing at the EPA. "We're ending the theft of American prosperity and rebuilding our beloved country."

Trump's order also directs the Department of the Interior to lift a temporary ban, put in place last year, on coal leasing on federal lands. In addition, it eliminates federal guidance instructing agencies to factor climate change into policymaking and disbands a team tasked with calculating the "social cost of carbon."
By undoing the Clean Power Plan, the Trump administration is putting projected carbon emissions back on an upward trajectory. It is also abandoning any hope of meeting the U.S. emissions reduction targets set out in 2015 in the 195-country Paris Agreement, the first global climate pact to include China and the U.S., the world's top polluters.

China ratified the Paris climate deal in September. In January, Chinese President Xi Jinping urged the U.S. not to withdraw from the agreement. Trump's executive order does not contain language critical of the Paris accord, reflecting pressure from Trump's few advisers who don't take a hard-line stance against climate science.

To be sure, the Trump administration can't just get rid of the Clean Power Plan outright. In his previous role as Oklahoma's attorney general, EPA chief Scott Pruitt sued the Obama administration to block the plan, claiming the rule overstepped the EPA's legal mandate.

In a victory for Pruitt and other Republican state attorneys general, the Supreme Court issued a stay on implementing the plan in February 2016. But the high court's 2007 ruling in Massachusetts v. EPA, which categorized greenhouse gases as a pollutant, legally compels the federal environmental agency to police emissions.

"It looks like there's going to be a reopening of the whole question of the best way, the legal way, to get at the largest source of greenhouse gas pollution in our country, which is the fossil fuel-fired power plants," Frank Rambo, head of clean energy and air pollution at the nonprofit Southern Environmental Law Center, told The Huffington Post in an interview ahead of the order's release.

Environmentalists are likely to sue to protect the Clean Power Plan, forcing the White House to prove in court that the regulation meets the legal standard of "arbitrary and capricious." To successfully employ this standard to overturn a previous court ruling, White House attorneys would have to debunk the overwhelming scientific consensus that global warming is man-made.

The biggest problem with dismantling the Clean Power Plan is that the plan itself represents only a preliminary step toward reaching emissions reduction goals. Even if the plan were to be perfectly implemented, the U.S. would still be progressing only halfway toward achieving its emissions goals for 2025. Trump may fail to completely undo the plan, but his administration seems unlikely to enact other policies to reduce emissions.

Trump pledged to boost the U.S. economy by gutting environmental regulations he blames for holding back businesses. Earlier this month, he proposed slashing the EPA budget by nearly one-third, eliminating popular programs like Energy Star and hampering the agency's enforcement division. The EPA already rescinded a rule this month requiring oil and gas drillers to report leaks of methane, a greenhouse gas 40 times more potent than carbon dioxide.

Kneecapping U.S. participation in the Paris Agreement could jeopardize the future of the deal itself. The accord, signed in December 2015, set out global emissions targets far below what's required to prevent world temperatures from surpassing the 3.6-degree Fahrenheit increase that scientists say will irreversibly damage human civilization.

The language of the Paris deal urges the United Nations to reconvene every five years to set new, more stringent goals. If a country as wealthy and powerful as the U.S. fails to meet its baseline commitments, it's unlikely that poor, developing countries that depend on fossil fuels to grow their economies will make ambitious emissions cuts themselves.

The failure of previous global deals, such as the 1992 Kyoto Protocol, hinged in large part on the U.S.'s refusal to implement emission cuts. And already, Trump has proposed curtailing payments to the U.N.-administered Green Climate Fund, which helps poorer countries build renewable energy infrastructure and prepare for the effects of climate change.

"The world is safer when America is strong," Interior Secretary Ryan Zinke said in a speech before Trump. "Our strength relies on energy."

USA Today
http://www.usatoday.com/story/news/politics/2017/03/28/energy-independence-not-climate-change-becomes-priority-under-trump-order/99725640/
Energy independence, not climate change, becomes priority under Trump order
By Gregory Korte 3/28/17, 2:20PM

WASHINGTON — President Trump's executive order on American energy independence is a sweeping repudiation of Obama-era environmental initiatives, substituting a strategy of combating climate change through international cooperation for an America-first energy policy.

Trump proclaimed the order as "the start of a new era of American energy production" that would "restore economic freedom and allow our workers to thrive compete and succeed on a level playing field for the first time in a long time."

Trump spoke at a signing ceremony at the Environmental Protection Agency Tuesday on a stage with a dozen coal miners.

Trump's order attempts to roll back Obama-era policies on power plant emissions limits, coal mining on federal lands, and regulations on fracking and methane. Because most of those rules were finalized under Obama, the Trump would have to start from the beginning on a rulemaking process to dismantle those regulations.

Even further, the order also takes aim at the entire framework of climate change action under the previous administration. Under Obama, federal agencies were required to plan for and mitigate the future effects of climate change, treat it as a national security issue, and attempt to reduce their own greenhouse gas emissions by 40%. All of those policies are rescinded by Trump's order.

Environmental activists deplored the order. Annie Leonard of Greenpeace USA said it showed Trump is "just a fossil fuel industry stooge with a presidential pen."

But she also cast the executive order as a temporary setback. "Thankfully, for all his bluster, the best Trump can do is delay America's inevitable transition to clean energy, but he can't stop it," she said.

White House officials said Trump's action "will look back and it will look forward," providing the framework for a new Trump-era energy framework that will emphasize more production and more jobs.

And despite relaxing environmental standards, the White House argues that its energy policies can be good for the environement in the long term. "The president strongly believes that protecting the environment and promoting our economy are not mutually exclusive goals," press secretary Sean Spicer said Tuesday. "This executive order will help to ensure that we have clean air and clean water without sacrificing economic growth and job creation."

The order will ask all federal agencies to identify obstacles to domestic energy production, with a report back to the White House for future action. And Trump said the order is "returning power to the states, where that power belongs."

The order makes good on Trump's promise to end what he called a "war on coal," and to bring back coal jobs. "I made them this promise. We will put our miners back to work," Trump said Tuesday.

"The war on coal is over," said Vice President Mike Pence at an executive order signing ceremony Tuesday, flanked by Secretary of Energy Rick Perry, Interior Secretary Ryan Zinke and EPA Administrator Scott Pruitt.

Former vice president Al Gore called the order "a misguided step away from a sustainable, carbon-free future for ourselves and generations to come."

"No one man or group can stop the encouraging and escalating momentum we are experiencing in the fight to protect our planet," Gore said.

CNN
http://www.cnn.com/2017/03/27/politics/trump-climate-change-executive-order/
Trump dramatically changes US approach to climate change
By Dan Merica 3/28/17

Washington (CNN) President Donald Trump signed a sweeping executive order Tuesday at the Environmental Protection Agency, which officials said looks to curb the federal government's enforcement of climate regulations by putting American jobs above addressing climate change.

The order represents a clear difference between how Trump and former President Barack Obama view the role the United States plays in combating climate change, and dramatically alters the government's approach to rising sea levels and temperatures -- two impacts of climate change.

Trump said during the signing that the order will "eliminate federal overreach" and "start a new era of production and job creation."

"My action today is latest in steps to grow American jobs," Trump added, saying his order is "ending the theft of prosperity."

A White House official briefed on the plan said Monday the administration believes the government can both "serve the environment and increase energy independence at the same time" by urging the EPA for focus on what the administration believes is its core mission: Clean air and clean water.

More important than regulating climate change, the official said, is protecting American jobs.

"It is an issue that deserves attention," the official said of climate change. "But I think the President has been very clear that he is not going to pursue climate change policies that put the US economy at risk. It is very simple."

Tuesday's order initiates a review of the Clean Power Plan, rescinds the moratorium on coal mining on US federal lands and urges federal agencies to "identify all regulations, all rules, all policies ... that serve as obstacles and impediments to American energy independence," the official said.

Specifically, the order rescinds at least six Obama-era executive orders aimed at curbing climate change and regulating carbon emissions, including Obama's November 2013 executive order instructing the federal government to prepare for the impact of climate change and the September 2016 presidential memorandum that outlined the "growing threat to national security" that climate change poses.

"The previous administration devalued workers by their policies," the official said. "We are saying we can do both. We can protect the environment and provide people with work."

The White House official went on to argue that the best way to protect the environment is to have a strong economy, noting that countries like India and China do less to protect the environment.

"To the extent that the economy is strong and growing and you have prosperity, that is the best way to protect the environment," the official said.

The executive order also represents the greatest fears climate change advocates had when Trump was elected in November 2016.

"These actions are an assault on American values and they endanger the health, safety and prosperity of every American," Tom Steyer, the president of NexGen Climate, said in a statement. "Trump is deliberately destroying programs that create jobs and safeguards that protect our air and water, all for the sake of allowing corporate polluters to profit at our expense."

Andrew Steer, CEO of the World Resources Institute, said that the executive order shows Trump is "failing a test of leadership to protect Americans' health, the environment and economy."

Some environmental advocates have already said they plan to take legal action against the Trump administration.

But as much as Democrats and climate advocates will decry it, Trump's executive order follows the President's past comments about climate change. Though Trump told The New York Times during the election that he has an "open mind" about confronting climate change, he also once called it a hoax.

"The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive," Trump tweeted in November 2012.

"I will also cancel all wasteful climate change spending from Obama/Clinton," Trump said in October 2016.

On Tuesday, ahead of the signing, White House press secretary Sean Spicer declined to say whether Trump still believes climate change is a hoax.

"He does not believe ... that there is a binary choice between job creation, economic growth and caring about the environment," Spicer said. "That's what we should be focusing on."

The changes, the official said, do not mean the Trump administration will not look to protect the environment any longer, the official said, but when pressed about the human impact on climate change and Trump's beliefs, the official was reluctant to say whether all government officials in the Trump White House believe humans cause climate change.

"I think there are plenty of rules on the books already. We will continue to enforce that provide for clean air and clean water. And that is what we are going to do," the official said. "The President has been very clear that he wants the EPA to stick to that basic core mission that Congress set out for it."

The changes also reflect the view of EPA Administrator Scott Pruitt, who routinely sued the organization he now leads during his time as the Attorney General of Oklahoma. In an interview with CNBC earlier this month, Pruitt argued incorrectly that carbon dioxide isn't the "primary contributor" to climate change, a comment that goes against most scientific research.

This executive order is also an attempt by the Trump administration to make good on its promise to bring more coal jobs back. The official said that Obama's regulations "were not helpful" to the coal industry and these reversals are the President honoring "a pledge he made to the coal industry."

"We are going to put our coal miners back to work," Trump said at a March 2017 event in Kentucky. "They have not been treated well, but they're going to be treated well now."

He added: "The miners are coming back."

On Tuesday at the EPA, Trump welcomed a group of miners that attended the signing and said the order was "putting an end to the war on coal."

It is unclear whether Trump's order will actually bring back coal jobs, in part, because of market forces like the rise of clean energy that are already putting pressure on the coal industry.

Robert Murray, the CEO of Murray Energy, told CNN in January that coal employment "can't be brought back to where it was before the election of Barack Obama" because of market pressure.

Mashable
http://mashable.com/2017/03/28/trump-climate-change-rollback-order-from-epa/#j6w_RvcwPiqN
In ultimate insult, Trump to roll back EPA's climate policies from within the EPA
By Maria Gallucci 3/28/17

President Donald Trump took his first swing at the Environmental Protection Agency (EPA) when he tapped the agency's biggest opponent — a man who denies climate science — to run the show. His second hit came earlier this month when Trump proposed shrinking the EPA's budget by 31 percent.

Trump will land his third big blow on Tuesday afternoon, when he is expected to issue a sweeping executive order that will begin unraveling the Obama administration's key efforts to address climate change, including the EPA's Clean Power Plan.

Adding insult to injury, he's expected to sign the order from within the very walls of the EPA's headquarters — a move that prompted plenty of bitter eye-rolling on Twitter.

The Trump administration says the order will simply prioritize the EPA's focus on clean air and water while winding down "job-killing" policies designed to reduce emissions contributing to global warming.

A White House official briefed on the plan told CNN that Trump officials believe the government can "serve the environment and increase energy independence at the same time." Trump's supporters have said the coming changes will finally lift EPA's "strangling effect" on the economy.

But many climate and environmental experts have staunchly opposed the Trump administration's regressive vision for the 47-year-old agency. The EPA is, by definition, supposed to protect Americans from environmental harm, including the effects of human-driven climate change such as rising sea levels, more intense droughts, extreme weather events and more.

Current and former EPA employees have turned out by the hundreds to oppose Trump's attempted rollback of Obama-era policies to cut emissions from power plants, automobiles and oil and gas well sites.

The EPA's new boss, Scott Pruitt, is one of the nation's biggest champions of such reversals. As Oklahoma attorney general, he led a Republican legal battle against the Clean Power Plan, which requires states to reduce carbon emissions from power plants.

Like Trump, Pruitt has also questioned the mainstream scientific consensus that the planet is warming and that human activity is primarily to blame.

While some climate rollbacks can be changed with the stroke of a pen, others could take years to complete. The Clean Power Plan, for instance, requires at least a year of bureaucratic work to unravel, and lawsuits from environmental groups could delay the process even longer.

Still, at Trump's signing ceremony, smiles and prolonged handshakes are sure to fill the room. But down the halls of the EPA, and in many homes and offices across the U.S., the mood will grow resoundingly sour.

Gizmodo
http://gizmodo.com/trumps-drastic-move-to-dismantle-the-clean-power-plan-w-1793709534
Trump's Drastic Move to Dismantle the Clean Power Plan Won't Bring Coal Back
By Sidney Fussell 3/28/17, 11:50AM

On Tuesday, President Trump is expected to begin the process of dismantling Obama's environmental legacy, including his signature climate action policy, the Clean Power Plan. According to Reuters, Trump will sign an executive order compelling the Environmental Protection Agency to review and rewrite the plan, which calls on states to reduce carbon emissions from power plants, with an overall goal of shaving 32 percent off the power sector's greenhouse gas footprint by 2030. As Trump and EPA head Scott Pruitt see it, regulations like this need to be dismantled to end the EPA's "job killing war on coal." Other experts say a roll back of the CPP is in the fossil fuel industry's best interest, but can't revitalize Big Coal.

It's important to recognize that Trump can't unilaterally sweep away the CPP with a single executive order. All he can do is give the EPA the green light to review and rewrite the plan under Pruitt. (As Oklahoma Attorney General, Pruitt sued to block implementation of the CPP, and later, he dismissed calls from Democrats to recuse himself from the rewriting process.) Any real changes to the CPP will require years of public hearings and, undoubtedly, lawsuits from environmental agencies arguing that a coal-friendlier version of the policy doesn't go far enough in protecting us from climate pollution. In the meantime, however, Pruitt can send the message to the fossil fuel industry that the EPA, under his leadership, will be lax in enforcing regulations. The message to the rest of the world is that the America doesn't give a shit about tackling climate change.

"I think that message has already been sent," Janet McCabe, the former head of the EPA's Office of Air and Radiation, and one of the architects of the Clean Power Plan, told Gizmodo.

When crafting the CPP, McCabe told Gizmodo, the EPA's plan was to allow states to set emissions targets in line with a nationwide energy transition away from coal, and towards natural gas and green energy. Coal usage has been dropping for decades as the US invests in fracking and green energy, with solar in particular growing in prominence as prices have fallen. The regulatory impact of the CPP adds to the market forces crippling coal, but it isn't the root cause of coal's demise.

This makes it difficult to quantify what *exactly* is being caused by the CPP in terms of jobs losses, versus what's happening naturally. Or as McCabe put it, "How do you tease out the effects of the Clean Power Plan in comparison to how the market is going anyway?"

The upside of accelerating the transition away from coal, McCabe said, was the opportunities afforded to the green energy sector, which has taken off explosively in recent years, both in the United States and internationally. Green energy is expected to continue to grow as new technology makes solar panels and wind turbines more cost-effective, and as production of these technologies reaches economies of scale. Last year, renewable energy accounted for more than half of all new power-generating capacity worldwide, with roughly half a million solar panels installed around the planet each day. A person interested in bringing back American jobs might call such an industry a good investment.

"When you look at the impacts of regulation, you look not just at job losses but also potential job gains," McCabe said.

Jobs aside, the CPP is essential to upholding our commitment to the Paris Climate Agreement, an agreement between 141 countries to zero out carbon emissions this century in order to limit global warming to 2 degrees Celsius and prevent some of the more catastrophic impacts scientists are predicting. Dismantling the CPP essentially walks back our commitment not just to Paris specifically, but to international climate action. Pruitt called the agreement a "bad deal" but there's no official word on whether the US will try to withdraw, a process that would take several years.

Tellingly, several of the states that sued to block the Clean Power Plan's implementation—arguing that the rules were too stringent—are nonetheless still meeting their emissions reduction goals, because they've increased their reliance on natural gas and green energy. Even if the CPP is weakened, the market forces driving that energy transition will still exist. Gas will still be cheaper and cleaner than coal. Green energy will still, eventually, be cheaper and cleaner than coal. And a lot of coal miners will still be out of a job.

Daily Caller
http://dailycaller.com/2017/03/28/industry-eagerly-anticipating-trump-order-trashing-obamas-green-legacy/
Industry 'Eagerly Anticipating' Trump Order Trashing Obama's Green Legacy
By Andrew Follett 3/28/17, 1:03PM

The largest U.S. business lobby is excited President Donald Trump will sign an executive order to repeal much of Obama's environmental legacy.

"This is something we are eagerly anticipating," Christopher Guith, vice president for energy at the U.S. Chamber of Commerce, told The Daily Caller News Foundation. "It addresses many overreaches of the previous administration. It starts the process by which agencies can create sane and sound regulations."

Trump's order will get the Environmental Protection Agency (EPA) to revisit Obama's Clean Power Plan, alter the previous administration's environmental permitting process, and rework the government's "social cost of carbon." Rolling back these rules and regulations should get the U.S. closer to energy independence and spur job growth.

"The order give EPA premise to revisit the Clean Power Plan [CPP] which was unworkable," Guith said "This isn't about crippling the CPP, it is about making a system which actually work. This will ultimately bring about more carbon dioxide emissions reduction than Obama's plan would and will do it without the economic devastation."

If implemented, CPP would have cost a staggering $41 billion annually, which equates to about $10.74 a month for each American. Less than 39 percent of Americans would be willing to spend that level of extra cash to fight global warming, according to a poll. The Clean Power Plan would have only adverted 0.019° Celsius of warming by the year 2100, an amount so small it can't be detected, according to analysis by the libertarian Cato Institute using models created by the Environmental Protection Agency.

Trump's executive order will also change how the federal government interprets the National Environmental Policy Act (NEPA) will make it easier for companies, individuals and government entitites to get environmental permits. President Obama changed the way the government interpreted the act in a way which made permitting very difficult

"The guidance that the Obama administration put out without going through any sort of rulemaking will also be addressed," Guith told TheDCNF. "This was a godsend for environmental lawyers as they could sue the federal government for any previous projected which addressed greenhouse gases. Rolling back the unilateral action on NEPA permitting reviews by the Obama administration will change that."

The other major impact of Trump's order is to shift the way government agencies measure carbon dioxide (CO2) emissions.

"When the Obama administration was trying to justify regulations that would cost the economy tens of billions of dollars they created this process called the Social Cost of Carbon," Guith concluded. "The Trump administration has said that this isn't how we do cost benefit analysis. We don't just invent them This was used to justify regulations which cost tens of billions of dollars and claim they were saving money."

EPA previously used the Social Cost of Carbon to claim CPP created billions of dollars in economic benefits from reducing carbon dioxide emissions, allowing the agency to significantly overstate the benefits of the regulation.
Free market groups were also pleased by the executive order, as it will significantly reduce regulation.

"President Trump's Executive Order on withdrawing much of President Obama's climate and energy-rationing agenda is welcome news for the American people," Myron Ebell, director of energy and environment at the libertarian Competitive Enterprise Institute and Trump's former EPA transition head, said in a press statement. "These rules, which are clearly illegal, would raise electric rates for consumers significantly and do immense economic damage to the heartland states where U. S. manufacturing is now concentrated."

BNA
http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=108093090&vname=dennotallissues&wsn=499566000&searchid=29533522&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0
Trump Said to Issue Far-Reaching Reversal of Obama Climate Push
By Jennifer A Dlouhy 3/28/17

President Donald Trump is set to sign a sweeping executive order March 28 aimed at promoting domestic oil, coal and natural gas by reversing much of his predecessor's efforts to address climate change.

The document lays out a broad blueprint for the Trump administration to dismantle the architecture that former President Barack Obama built to combat the phenomenon, according to details shared with Bloomberg News. Some of the changes will happen immediately, while others will take years to complete.

The order will compel federal agencies to quickly identify any actions that could burden the production or use of domestic energy resources, including nuclear power, and then work to suspend, revise or rescind the policies unless they are legally mandated, are necessary for the public interest or promote development.

It also will toss out two Obama-era directives that gave climate change a prominent role in federal rule making. One advised government agencies to factor climate change into environmental reviews, such as those governing where oil

drilling could take place. The other, called the "social cost of carbon," is a metric reflecting the potential economic damage from climate change that the Obama administration used to justify a suite of regulations.

Pro-Growth

"This is about making sure that we have a pro-growth and pro-environment approach to how we do regulation in this country," Scott Pruitt, head of the Environmental Protection Agency, said on ABC's "This Week" program March 26.

Trump, who has called climate change a hoax, has vowed to reorient the government so that U.S. oil and coal producers thrive and steel and auto manufacturers don't face "job-killing restrictions." The coming order underscores Trump's commitment to make good on his campaign promises, which helped propel him to victory in industrial strongholds such as West Virginia and Pennsylvania.

The details shared with Bloomberg News reflected the latest draft of the White House order and could change before the announcement, which Pruitt said would happen March 28.

While the order will make clear that the target of the planned regulatory rollback should be policies curbing the production of oil, natural gas, coal and nuclear energy, it also will say the U.S. is well served when affordable, reliable and clean electricity is produced from an array of sources, including solar, wind and hydropower.

The order also is set to include a targeted assault on a handful of specific Obama-era regulations. It will require the Interior Department to lift a moratorium on the sale of new coal leases on federal land and compel the EPA to review, and, "if appropriate," begin proceedings to suspend, revise or rescind regulations designed to reduce greenhouse gas emissions from power plants.

Clean Power Plan

Obama's Clean Power Plan was designed to cut carbon dioxide emissions from electricity by 32 percent by 2030 compared to 2005 levels. The initiative has been in legal limbo since the Supreme Court stayed it while it was reviewed by a federal appeals court. The Trump administration now is expected ask that court to put the matter on hold to allow it time to revise or undo the measure—an action environmentalists have vowed to challenge.

Other policies in the crosshairs: an EPA rule setting requirements for greenhouse gas emissions for construction of new power plants and an Interior Department regulation setting mandates on hydraulic fracturing of oil and gas wells on federal lands. The Interior Department's Bureau of Land Management said earlier this month that it will begin the process to rescind the regulation, which requires companies to disclose the chemicals they pump underground and to seal off wastewater in storage tanks.

Revoking Directives

Trump's executive order also is set to revoke six specific directives from his predecessor, including Obama's broad strategy for paring emissions of methane released from oil and gas operations. Other Obama directives targeted for repeal include one on climate change and national security, as well as a pair of directives from June 2013 that laid out his climate plans.

The Obama administration wove climate considerations into decisions across the federal bureaucracy, from efficiency standards for microwave ovens to the refurbishing of government buildings.

Coal Market

The changes may have little immediate impact on the market for coal, which is facing stiff competition from cheaper natural gas and renewable energy, analysts said.

Even before the Obama administration imposed the coal-leasing moratorium in January 2016, producers had little interest in adding new federal reserves to their portfolios amid slumping domestic demand. The U.S. government has sold just one coal leases since October 2012, though earlier this month it approved a transaction originally sought in 2005. Existing federal leases contain at least 20 years' worth of coal, according to Interior Department estimates.

Even without the EPA's Clean Power Plan in force because of the Supreme Court stay, using coal to generate electricity has been in decline as a result of previous pollution regulations and competition from low-cost natural gas, solar and wind.

Coal's Decline

The removal of the Clean Power Plan could halt coal's decline as a source of electricity during the next two decades, according to projections from the Energy Information Administration. More coal use would mean less natural gas use, EIA said.

Trump's action sets in motion at least a year of bureaucratic work at the EPA to formally dismantle the Clean Power Plan. And whatever happens will inevitably be challenged in court by those same environmental groups.

By contrast, the Interior Department can undo the coal leasing moratorium with the stroke of a pen, the same way it was imposed a year ago, under an administrative order issued by former Interior Secretary Sally Jewell.

Trump's targets also would reduce the role of climate change in government decision-making. For instance, the social cost of carbon metric served as the linchpin for many Obama administration environmental rules. Critics say the number—now nearly $40 for every metric ton of carbon dioxide emitted into the atmosphere—gives artificial precision to uncertain conditions nearly 300 years in the future.

According to shared details of the executive order, the Trump administration will disband the working group that created the social cost of carbon and return to an earlier 2003 approach for calculating the costs and benefits of proposed regulations.

Wall Street Journal
https://www.wsj.com/articles/despite-trump-move-utilities-shift-from-coal-is-set-to-continue-1490693406
Despite Trump Move on Climate Change, Utilities Shift From Coal Is Set to Continue
By Cassandra Sweet 3/28/17, 10:08AM

The Trump administration's expected move to roll back President Obama's signature climate-change policy may extend the life of some aging coal-fired power plants, but companies and energy experts say it is unlikely to reverse the U.S. utility industry's shift to natural gas, solar and wind as leading sources of electricity.

President Donald Trump is expected Tuesday to sign an executive order that would begin to reverse the Clean Power Plan, which would have required utilities to reduce power-plant carbon-dioxide emissions to 32% below 2005 levels by 2030. The order also rolls back guidance from the Council on Environmental Quality on climate change and rescinds a temporary ban on new coal leases on federal lands, a senior White House official said Monday night.

While the action may give a reprieve to some coal-fired plants facing extinction, large utilities say they will continue long-term investments to generate more power from gas, wind and solar, which are being driven by economic as well as regulatory forces. The White House official said Monday that the order is part of the president's promise to restore the coal sector, but the official acknowledged that merely repealing the regulations wouldn't bring back jobs.

Cheap U.S. natural gas unlocked by hydraulic fracturing and horizontal drilling has prompted many companies to scrap older coal plants in favor of gas-fired plants, which require fewer workers to operate. Companies are also taking advantage of tax credits for renewable power to build out solar and wind farms, which are becoming more cost-competitive with fossil-fuel generation thanks to economies of scale and advances in technology.

Duke Energy Corp. says it plans to invest $11 billion in natural gas and renewable power generation over the next 10 years, as the company aims by 2026 to cut its greenhouse-gas emissions by 35% from 2005 levels.

That represents a long-term company strategy and isn't likely to change, Duke Chief Executive Lynn Good said in a February interview. The utility's power generating mix is now 34% coal and 28% natural gas, compared with 61% coal and 5% gas in 2005. By 2026, it estimates gas will be the dominant fuel, followed by coal, nuclear and renewable power.

"Because of the competitive price of natural gas and the declining price of renewables, continuing to drive carbon out makes sense for us," said Ms. Good. "Administrations will change during the life of our business and our assets, and we'll continue to move forward in a way that makes sense for our investors and our customers."

Southern Co. plans to invest at least $1 billion a year over the next five years in new wind farms. It now uses natural gas to generate 47% of its power, with coal providing 31%, nuclear 15%, and hydropower, wind, solar and other renewable sources 7%.

"Going forward, we anticipate an increase in renewable generation capacity and declining utilization of coal," said Terrell McCollum, a spokesman for the Atlanta-based utility.

U.S. utilities generated more electricity from natural gas than from coal last year. Power from coal plants fell to 3.4 million megawatt-hours a day in 2016 to supply 30% of U.S. generation, down from 33% in 2015, according to the U.S. Energy Department. Natural-gas plants supplied 3.8 million megawatt-hours daily, or 34% of total power supplies this past year, up from 33% the previous year.

Hydropower and other renewables generated 1.7 million megawatt-hours daily, or about 15% this past year, up from 13% in 2015. Nuclear plants contributed 20%, and petroleum and other sources produced the rest.

Without the Clean Power Plan, however, the Energy Department expects coal-fired generation from existing plants to rise and natural gas-fired generation to fall by 2020, followed by another reversal after 2030 when it anticipates gas will exceed coal again.

The extent of a coal recovery will depend largely on the price utilities pay for gas, which averaged about $3 a million British thermal units last year. The department predicts it will rise to more than $4.50 in 2020, and $5 in 2029.

Many energy companies face state requirements to increase renewable power generation and are coming under pressure from large investors such as pension funds and university endowments to clean up their operations.

More pension funds, university endowments and other funds are divesting from companies that burn coal over concerns about the environment, said Fiona Reynolds, managing director at Principles for Responsible Investment, a London-based nonprofit that helps funds figure out how to cut the carbon footprint of their investments. "Investors want to see companies that are moving away from coal, to other energies," she said.

Nearly 700 institutions worth more than $5 trillion have pledged to divest from fossil fuel companies, according to a December report by consulting firm Arabella Advisors.

Still, some coal plants that are economical to run, particularly those owned by rural electric cooperatives in states where coal is plentiful, are likely to enjoy longer lives without the carbon rule.

Basin Electric Power Cooperative, based in Bismarck, N.D., was among the power generators that fought the Clean Power Plan in court. It was concerned it would be forced to shut down coal plants it is still paying off, and replace them with new gas plants and wind farms, at a cost of $5 billion.

"We're building natural gas and wind, but that doesn't mean we would take a perfectly functioning coal facility and not consider that a valuable resource as well," said Mike Eggl, a spokesman for Basin Electric.

BBC
http://www.bbc.com/news/science-environment-39419074
Trump to make major change to US climate change narrative
By Matt McGrath 3/28/17

"This is, I think, one of the most historic attacks on climate and environmental action that the US has ever seen," said Liz Perera from the Sierra Club.

Her words are certain to cheer Trump supporters everywhere.

Green "job-killing" regulations limiting energy production have long been a red rag for Donald Trump, as candidate and President.

His **expected new energy independence executive order** seeks to radically change the US narrative on climate change, its causes and its importance. The best way of fighting global warming according to the new outline is to create prosperity. Environmental regulation should be about air and water. CO2, in this light, is your friend.

Supporters believe that cutting back Obama climate regulations will create thousands of jobs in the newly liberated oil and gas industries.

His opponents agree the new order will be a job creator - but they'll be jobs for lawyers, not in the coal fields.

Front and centre is practical action on the **Clean Power Plan** (CPP), the Obama project to cut fossil fuels from electricity production. Although it has long **been tied up in the courts**, the CPP will be left to fester there while the new administration comes up with a much weaker replacement.

"Undoing the rule will not be straightforward," said Prof Bruce Huber, from the Notre Dame law school.

"For the Environmental Protection Agency (EPA) to reverse course, it will have to propose a new rule, with all the lengthy procedures that entails. When President George W Bush tried to reverse course on some of President Clinton's signature environmental regulations, those efforts took years and were not entirely successful."

In terms of coal, the new executive order will allow the Department of the Interior to lift a moratorium on the sale of new coal leases on federal lands. However, boosting coal as a source of energy, and jobs, will be very difficult.

Many coal plants **have shut down** not because of Obama's carbon restrictions but because of mercury pollution associated with burning the fuel. Thanks to fracking, cheap natural gas has soared as a source of power generation, and renewables are taking an every bigger share.

Former State department climate adviser Andrew Light now works for the World Resources Institute. Both of his grandfathers were coal miners.

"They were paid by the tonne for the coal they pulled out of the ground, but those jobs are gone, and technology has moved beyond that and I hope it's the case that voters in the coal states will recognise that their jobs aren't magically coming back because of this executive order," he told BBC News.

President Obama sought to put consideration of climate change at the heart of all government policy - but by revising the **social cost of carbon measure** and encouraging an immediate government review of all rules that inhibit energy

production, President Trump is signalling a change in the widely held philosophy that CO2 is the enemy, the main driver of climate change.

While rolling back Obama era ideas like the role of climate change in national security, or how climate change should be considered in relation to the **National Environmental Policy Act**, the Trump plan does not directly attack the key finding on which much of America's carbon restrictions are based.

Back in 2007, the US Supreme Court **ruled** that carbon dioxide gas was a pollutant under the Clean Air Act.

In response, the EPA ruled in 2009 that CO2 and other gases were responsible for contributing to climate change which results in a threat to the public health and welfare of current and future generations.

This "endangerment finding" compels the federal government to regulate emissions of CO2. And according to some environmentalists, this finding is the solid rock that Trump's plans will be dashed against.

"The law of the land is that CO2 endangers my public health and welfare," said Liz Perera from the Sierra Club.

"So they have to regulate it. What they are doing now is saying that all the Obama regulations were wrong but that means they are going to have to put something forward in their place and by the law it has to be adequate or we can sue them every step of the way."

Other experts believe that the ultimate goal of this executive order will be to overturn the Supreme Court ruling on CO2 as a pollutant.

They believe that the **declaration** of EPA administrator Scott Pruitt that CO2 was not a "primary contributor" to climate change is instructive of the direction of travel.

"It is fundamental," said Andrew Light. "I believe that Scott Pruitt wants to go after the endangerment finding. Their argument is that climate change exists, but it is not the case that humans are causing it.

"It is the endangerment finding that draws that tight connection between the fact that humans are making it and the fact that global warming is happening. Once you destabilise that point then you can go for the endangerment finding. That would be the biggest win they could get."

But Liz Perera, for one, believes that won't happen.

"We have the economics on our side, we have the market on our side, we have the public on our side, and we have the law on our side - that this is endangering public health and welfare. They can't change any of those things."

But in many ways, extended court battles are exactly what President Trump and the fossil fuel lobby are looking for.

"Delay is what they want," one green source told me. "Delay is winning."

Reuters
http://www.reuters.com/article/us-usa-trump-energy-idUSKBN16Z1L6
Trump to sign order sweeping away Obama-era climate policies
By Valerie Volcovici and Timothy Gardner 3/28/17 8:58 AM

U.S. President Donald Trump will sign an executive order on Tuesday to undo a slew of Obama-era climate change regulations, a move meant to bolster domestic energy production and create jobs, but environmentalists say the order is dangerous and vow to challenge it in court.

The decree's main target is former President Barack Obama's Clean Power Plan, requiring states to slash carbon emissions from power plants - a critical element in helping the United States meet its commitments to a global climate change accord reached by nearly 200 countries in Paris in December 2015.

The order will also rescind a ban on coal leasing on federal lands, reverse rules to curb methane emissions from oil and gas production, and reduce the weight of climate change in federal assessments of new regulations.

Trump has long telegraphed the moves, and claimed that undoing green regulation will trigger a new boom in oil, gas, and coal production and create thousands of jobs, all without harming U.S. air and water quality.

"We're going to go in a different direction," a senior White House official told reporters ahead of Tuesday's order. "The previous administration devalued workers with their policies. We can protect the environment while providing people with work."

Energy analysts and executives have questioned whether the moves will have a big effect on their industries, and environmentalists have called them reckless.

"I cannot tell you how many jobs the executive order is going to create but I can tell you that it provides confidence in this administration's commitment to the coal industry," Kentucky Coal Association president Tyler White told Reuters.

Trump will sign the order at the Environmental Protection Agency with Administrator Scott Pruitt, Interior Secretary Ryan Zinke and Energy Secretary Rick Perry on Tuesday afternoon.

The wide-ranging order is the boldest yet in Trump's broader push to cut environmental regulation to revive the drilling and mining industries, a promise he made repeatedly during the presidential campaign.

'ASSAULT ON AMERICAN VALUES'

Environmental groups hurled scorn on Trump's order.

"These actions are an assault on American values and they endanger the health, safety and prosperity of every American," said billionaire environmental activist Tom Steyer, the head of activist group NextGen Climate.

Green group Earthjustice was one of many organizations that said it will fight the order both in and out of court. "This order ignores the law and scientific reality," said its president, Trip Van Noppen.

An overwhelming majority of scientists believe that human use of oil and coal for energy is a main driver of climate change, causing a damaging rise in sea levels, droughts, and more frequent violent storms.

Trump and several members of his administration, however, have doubts about climate change, and Trump promised during his campaign to pull the United States out of the Paris climate accord, arguing it would hurt U.S. business.

Since being elected Trump has been mum on the Paris deal and the executive order does not address it.

Christiana Figueres, former executive secretary of the United Nations Framework Convention on Climate Change who helped broker the Paris accord, lamented Trump's order.

"The action by the U.S. to undo important domestic carbon reduction regulation in the face of the enormous momentum building globally toward a low carbon economy risks putting the country on a back-foot at a time when most Americans are looking to lead," she said in a statement.

"Trying to make fossil fuels remain competitive in the face of a booming clean renewable power sector, with the clean air and plentiful jobs it continues to generate, is going against the flow of economics," she said.

The order will direct the EPA to start a formal "review" process to undo the Clean Power Plan, which was introduced by Obama in 2014 but was never implemented in part because of legal challenges brought by Republican-controlled states.

The Clean Power Plan required states to collectively cut carbon emissions from power plants by 32 percent below 2005 levels by 2030.

Trump's order lifts the Interior Department's Bureau of Land Management's temporary ban on coal leasing on federal property put in place by Obama in 2016 as part of a review to study the program's impact on climate change and ensure royalty revenues were fair to taxpayers.

It also asks federal agencies to discount the cost of carbon in policy decisions and the weight of climate change considerations in infrastructure permitting, and reverses rules limiting methane leakage from oil and gas facilities.

Politico
http://www.politico.com/story/2017/03/donald-trump-obama-climate-change-policies-236570
Trump takes biggest swing yet at Obama climate legacy
By Alex Guillen 3/28/17, 7:01AM

President Donald Trump will direct the federal government on Tuesday to begin dismantling his predecessor's most significant climate change policies, with a sweeping directive telling agencies to stop trying to reduce the carbon pollution of electric utilities, oil and gas drillers and coal miners.

The executive order Trump will sign represents his biggest blow yet to former President Barack Obama's climate legacy. But it does not go as far as some conservatives would like to dismantle the EPA's authority to regulate greenhouse gases, nor will it begin to separate the U.S. from a landmark international climate accord — two areas of intense disagreement within the administration.

Democrats argue that Trump is ignoring the risks of climate change for the sake of rewarding supporters in the fossil fuel industry.

"My hope is that we're at peak climate science denial in the Republican Party," Sen. Chris Murphy (D-Conn.) told POLITICO Monday. "They're going to extraordinary lengths to deny this meteor that is global warming is catapulting toward the Earth. I'm scared stiff. My kids won't be able to solve this problem if we don't tackle it right now because it will be too late in 20 years."

After last week's embarrassing failure of Trump's attempt to repeal and replace Obama's health care law, the energy executive order offers the president a chance to refocus on another key campaign-trail promise: unleashing the American energy industry. The order comes on the heels of Trump's move to ease Obama's ambitious vehicle fuel efficiency requirements and his order to reverse EPA's controversial Waters of the U.S. rule. The president has also recently signed legislation undoing Obama-era rules on Appalachian coal mining and energy companies' payments to foreign governments.

Trump plans to order the EPA to rewrite tough rules that make it virtually impossible to build a new coal-fired power plant, and he will tell the Interior Department to end Obama's moratorium on new coal mines on federal lands, among other steps, White House officials said.

Additionally, the president's "energy independence" executive order also will repeal several Obama-era environmental directives aimed at reducing the federal government's own carbon footprint, and it will direct agencies to ferret out any additional policies that "result in impediments" to U.S. energy production, a likely reference to restrictions on fracking and offshore drilling. The president also will tell federal regulators to stop using the "social cost of carbon," which attempts to quantify the effects of climate change, in economic analyses of future rules.

"There is every reason to believe that the federal government will no longer seek to punish American consumers and businesses for using the energy resources that fuel our economy," U.S. Chamber of Commerce President and CEO Thomas J. Donohue said in a statement welcoming the order.

But Trump is not expected to tell EPA to reconsider the underlying policy that lets it regulate carbon emissions — the 2009 "endangerment finding" in which it declared that greenhouse gas pollution threatens human health and welfare. Nor will he address whether the U.S. will stay in the 2015 Paris climate accord.

"We're happy with it so far and we look forward to the right decisions on Paris and endangerment, but I think those are still to be made and they're a ways down the road," said Myron Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute and the former leader of Trump's EPA transition team.

EPA Administrator Scott Pruitt went on national TV earlier this month to declare that carbon dioxide is not "a primary contributor to the global warming that we see," a statement that is at odds with the conclusions of the vast majority of climate scientists, including those at his own agency. But Pruitt has not followed up on that statement with any effort to reverse the Obama-era endangerment finding — a factor that sources say contributed to last week's abrupt departure of a Trump appointee from the agency.

On Monday, a writer for Breitbart.com, the site previously run by White House strategist Steve Bannon, suggested that a failure to revoke the endangerment finding would be grounds for Pruitt to resign.

"If Scott Pruitt is not up to that task, then maybe it's about time he did the decent thing and handed over the reins to someone who is," wrote James Delingpole, a prominent climate skeptic.

The White House did not rule out later revisiting the endangerment finding, which Trump promised on the campaign trail to review. But environmentalists hope the administration decides that would be too much trouble, given that the policy already survived judicial scrutiny, and that courts are unlikely to support revoking it given the overwhelming scientific data on climate change.

Trump has not nominated anyone to fill key leadership positions below Pruitt and Interior Secretary Ryan Zinke, leaving open the question of how quickly his order will yield any concrete results.

"It's going to be harder if you don't have those positions filled," said David Doniger, director of the climate and clean air program at the Natural Resources Defense Council. "Unless, actually, their intention is never to fill them and work through political operatives who are not accountable."

Trump's advisers are split over whether to withdraw from the Paris climate deal, which Obama joined with a pledge to reduce U.S. emissions at least 26 percent from 2005 levels by 2025. The U.S. would face no penalty for missing that target, but many conservatives nonetheless say Trump should abandon the agreement altogether, as he pledged to do during the campaign.

But more moderate advisers, including Trump's daughter Ivanka and his son-in-law Jared Kushner, fear that pulling out would damage relations with key U.S. allies. Administration officials are now considering a middle-ground approach: Stay in the deal in exchange for more international support for technologies to reduce emissions from fossil fuels.

The order was also silent on a carbon tax, another issue that has become a flashpoint in disputes between moderates and hardliners in the White House.

Despite the lofty rhetoric coming out of the White House, Tuesday's order will have relatively little immediate effect.

It will take EPA years to rewrite its Clean Power Plan and accompanying rules on future power plants — both of which courts already had frozen while lawsuits play out.

The Trump administration plans to ask federal courts to suspend lawsuits over the EPA climate regulations and send the rules back to the agency to be rewritten or withdrawn. But the D.C. Circuit Court of Appeals, which heard arguments on the Clean Power Plan six months ago, does not have to go along. The appeals court judges could rule any day on the Clean Power Plan, and a separate D.C. Circuit panel has scheduled oral arguments on the future plant rule for April 17.

If EPA will not defend the regulation, environmentalists and states like California and New York have indicated they will step up and do so. And the ultimate fate of EPA's climate authority likely will eventually be decided by the Supreme Court, which ruled in 2007 that the agency had to regulate greenhouse gases if they endanger public health — but did not say how.

Trump's plans for the social cost of carbon are less clear.

The Obama administration estimated of that each ton of carbon dioxide imposes $36 in costs to society to evaluate its climate rules. But Republicans and fossil energy supporters argued it arrived at that figure by counting global benefits while specifying only domestic costs — and they complain the metric was not subjected to a traditional notice-and-comment period before it was employed.

Critics also said the Obama administration used the social cost of carbon to impose stricter rules at EPA, the Energy Department and elsewhere that would be too costly to justify otherwise. Many environmentalists, meanwhile, complained that the amount was too low.

Whether Trump significantly lowers the cost of carbon or abolishes it altogether, the change could have a serious impact on energy regulations that will play out over a period of years. And it remains unclear how the courts might react. Federal judges have upheld agencies' use of the metric before, but some may be inclined to give deference to the Trump administration over what amounts to a highly technical calculation.

Meanwhile, Trump's order will also lead to the resumption of federal coal leasing. But major coal companies are hardly champing at the bit to sign new leases on federal land, although the Bureau of Land Management could make new tracts available relatively quickly. For example, a spokesman for Peabody Energy, which mines more U.S. coal than anyone else, told Bloomberg that the company will not need a new lease in Wyoming's Powder River Basin for "approximately a decade."

The Obama administration imposed a moratorium in February 2016 as part of a three-year review of the federal coal program. That followed reports from the Government Accountability Office, Interior's inspector general and a coalition of environmentalists and government spending watchdogs that concluded Interior was undervaluing coal on public lands.

Zinke hinted earlier this month that he will continue the underlying review, despite lifting the moratorium, to ensure taxpayers get the full value of coal being sold off of federal lands.

It's not clear that the moratorium cost any jobs, particularly since most coal mining is happening on private rather than public lands. The National Mining Association has not calculated the costs of the moratorium so far, but the group noted that coal mines on federal lands employ 14,000 miners.

Politico Pro
https://www.politicopro.com/tipsheets/morning-energy/2017/03/energy-executive-order-arrives-but-wont-go-far-enough-for-some-022057
Energy executive order arrives but won't go far enough for some
By Anthony Adragna 3/28/17, 5:41AM

TODAY'S THE DAY! President Donald Trump will travel to EPA headquarters today at 2 p.m. to sign a sweeping directive that will begin dismantling his predecessor's most significant climate change policies, Pro's Alex Guillén reports. White House officials said the executive order will ask EPA to rewrite its Clean Power Plan and an accompanying rule on future power plants, repeal several Obama-era environmental directives aimed at reducing the federal government's own carbon footprint, request the Interior Department end Obama's moratorium on new coal mines on federal lands and tell federal regulators to stop using the "social cost of carbon," which attempts to quantify the effects of climate change, in economic analyses of future rules, among other provisions.

Far enough? While the order takes a sledgehammer to Obama-era efforts to embed climate change considerations into all components of federal decision-making, it does not go as far as some conservatives would like. Trump will not tell EPA to reconsider its "endangerment finding," the underlying policy that lets it regulate carbon emissions, nor will he pull the U.S. from the international Paris climate deal. A columnist for Breitbart, the website previously run by Trump's chief strategist Steve Bannon, even suggested EPA Administrator Scott Pruitt should consider resigning because he is "more interested in building his political career than he is taking on the Green Blob."

Pro's Andrew Restuccia and Alex Guillén have a deeper look at the conflicts. Pruitt successfully argued in closed-door meetings against using the executive order to try to overturn the endangerment finding, saying the legal hurdles were too great. Hardliners now hope the White House, perhaps Bannon, will intervene in the matter. But the endangerment finding is not the only source of unrest within EPA — Pruitt is irked by the White House's slow pace in nominating deputies, while others are expressing frustration at the presence of former Washington State Sen. Don Benton, who is expected to leave the agency soon.

EPA Spokesman John Konkus did not directly address Pruitt's role in discussions over the endangerment finding in a statement to ME Monday night: "The Executive Order focuses on the Clean Power Plan, and Administrator Pruitt is excited that the President is taking action on jobs, our economy, and the regulations that fail to put Americans first. This executive order is a victory for American jobs, and we think that speaks for itself."

A couple of important cautions: Neither Pruitt nor Interior Secretary Ryan Zinke have any reinforcements nominated below them to help implement the order, leaving open the question of how quickly Trump's order will yield any concrete results. And despite the lofty rhetoric coming out of the White House, Tuesday's order will have relatively little immediate effect. Some efforts, like rewriting the Clean Power Plan and other regulations, will take years to complete and face vigorous legal challenges from environmental advocates and blue states all along the way.

Not lying down: But green groups aren't waiting to mount their resistance to the administration's action. Activists are looking to protest outside Trump's speech at EPA and the Sierra Club, Mom's Clean Air Force and People's Climate Movement will host what they're calling an "emergency" White House rally tonight at 5 p.m. to fight rolling back the Clean Power Plan. "Trump can't reverse our clean energy and climate progress with the stroke of a pen, and we'll fight Trump in the courts, in the streets, and at the state and local level across America to protect the health of every community," Sierra Club Executive Director Michael Brune said in a statement. And five Senate Environment and Public Works Committee Democrats will hold their own press availability at 2 p.m. to respond to the executive order.

TRUMP TEAM RECOMMENDS DEEP DOE, EPA CUTS: A budget breakdown obtained by POLITICO recommends deep cuts for key EPA and Energy Department programs during the rest of fiscal year 2017, Pro's Alex Guillén and Helena Bottemiller Evich report.

DOE would take a $1.4 billion cut overall, including a 25 percent cut to the Office of Energy Efficiency and Renewable Energy.

EPA would lose $247 million, including a $48 million cut to the research and development account, largely from scaling back climate research. The document also suggests cutting $115 million from a more than $1 billion grant program to help states run their own environmental offices.

Interior's budget would take a $371 million hit, including $51 million from the Payment in Lieu of Taxes program, which compensates states with abundant federal land. It also proposes ending Rep. Hal Rogers's coal mine reclamation pilot project, saving $90 million, and would cut $372 million from the Low Income Home Energy Assistance Program.

But, but, but: Helena and Sarah Ferris report the request may not find a friendly airing on Capitol Hill. "Lawmakers have indicated they are prepared to reject Trump's calls to gut programs they deem important," they report.

READY TO ROLL: The Dakota Access Pipeline now contains oil ready for shipment, the pipeline operators said. The news marks the latest success for pipelines that President Trump highlighted in executive orders he signed during the first week of his taking office, following Trump's approval of Keystone XL on Friday. DAPL developer Energy Transfer Partners said in a court filing that it is in the last stages of commissioning the 1,200-mile pipeline and preparing it to deliver crude. DAPL opponents earlier this month lost their court fight seeking a block its completion.

HOW TRUMP MAKES POLICY CALLS: Trump is increasingly leaning on business executives to help shape his nascent policy decisions, Pro's Andrew Restuccia reports. The president often asks CEOs during private conversations to list the federal regulations they would most like to eliminate, according to people who have spoken with him. It's a level of access that is especially astonishing to industry and business executives used to being shut out during eight years with Barack Obama in the White House.

The rise of the business community comes as career staff at federal agencies are increasingly being left out of policy discussions: EPA's transportation experts were sidelined during the internal discussion about reopening Obama's fuel economy standards, infuriating staffers who had worked on the issue for years, according to two people familiar with the issue. And Trump's political appointees did not consult with State Department officials before the president issued a January memo calling for a Keystone approval.

FLINT GETS PIPE PROMISE: Under a settlement filed in federal district court Monday, the state of Michigan and city of Flint for the first time committed legally to replace 18,000 water service lines made of lead and galvanized steel. If approved by the judge, the agreement would end a lawsuit brought by Flint pastors, the Natural Resources Defense Council and the American Civil Liberties Union. The deal would have the state set aside $87 million for the work, in addition to the $100 million in federal funds approved by Congress last year, and commit to monitoring requirements to ensure the water's safety, but it would stop short of the door-to-door bottled water delivery that the plaintiffs sought in the suit.

YOU'RE HIRED: J.P. Freire is expected to join EPA as communications director, two sources with knowledge of the hire tell ME. Freire is currently communications director for Sen. Orrin Hatch. Neither Freire nor EPA responded to requests for comment.

ANOTHER EPA-RELATED BILL HEADED TO HOUSE FLOOR: The House Rules Committee meets today at 3 p.m. to discuss the EPA Science Advisory Board Reform Act (H.R. 1431), likely clearing the measure for floor action later this week. The bill, similar versions of which have cleared the House in prior congresses, would overhaul how members are picked for the agency's independent science advisory board to allow more industry-associated scientists to come aboard.

E&E News
http://www.eenews.net/energywire/2017/03/28/stories/1060052176
It's D-day for climate regs. Bombs fall at 2 p.m.
By Evan Lehmann 3/28/17

President Trump will try to land a knockout blow on his predecessor's sprawling climate agenda by issuing an executive order today targeting at least nine actions that form the foundation of U.S. efforts to cut emissions and prepare for rising perils.

The "energy independence" order, to be signed at 2 p.m. today, underscores Trump's belief that the seriousness of climate change was overblown by the past administration and deserves to be set aside in order to revive a struggling coal industry and encourage an unbridled boom in the production of oil and gas.

A senior White House official, when asked yesterday if the president agrees with scientists who say that people are largely responsible for rising temperatures, told reporters, "Yeah, sure."

But the administration appears deeply skeptical about the extent of potential damage that climate change might cause, and the order to be signed today would leave the administration seemingly free of any policy to address the risks — both environmental and economic — that scientists have warned about for years.

"I mean, to the extent that the economy is strong and growing and you have prosperity, that's the best way to protect the environment," the White House official said in a briefing about the order. "But certainly, natural gas is important. Clean coal's important. Nuclear is important. Renewables are important."

Today's executive order sets EPA on the road to rescind the Clean Power Plan, an Obama-era rule to reduce emissions at power plants 32 percent by 2030. The official said rescinding the rule could take up to three years and is bound to face legal challenges.

The order also eliminates Obama-era efforts to improve adaptation, embed climate risks in national security apparatuses, reduce agency emissions, expand the importance of climate impacts in the National Environmental Policy Act and freeze new coal leases on public land. It also begins a review of methane regulations by EPA and the Bureau of Land Management and a rule on hydraulic fracturing by BLM. And it will instruct agencies not to use the social cost of carbon when weighing the costs and benefits of environmental regulation.

The order also promotes fossil fuel production. It requires agencies to identify "all regulations, all rules, all policies [and] guidance documents that serve as obstacles or impediments to domestic energy production," the official said.

Then, in 180 days, the White House will use those agency plans to develop a "blueprint" for energy policy.

Does Trump believe in man-made warming? 'Sure, yeah'

The Clean Power Plan is the cornerstone of the United States' climate policy, and it is a key to meeting the nation's commitment under the global Paris Agreement, under which the United States has pledged to cut emissions 26 to 28 percent by 2025. Whether the United States will remain in the Paris accord is still being discussed in the White House, but the official suggested the nation's commitments stand to be weakened. Paris is not included in the order.

"I mean, we have a different view about how you should address climate policy in the United States, so we're gonna go in a different direction," the official said. "I can't get into what that ultimately means from an emissions standpoint. I have no idea."

The order also instructs the Department of Justice to essentially withdraw its defense of the Clean Power Plan in the U.S. Court of Appeals for the District of Columbia Circuit. Instead, it seeks to freeze the case, which is near completion, before the court issues an opinion expected this spring.

The official disputed the idea that the federal government is required to regulate greenhouse gases under Section 111(d) of the Clean Air Act.

"I'm sure there are plenty of people who disagree on that, but that's not something we're thinking of right now," the official said, adding that the administration is focused on unspooling the "massive" Clean Power Plan and not devising new policies to address emissions.

Environmental groups are already threatening to sue the government if it fails to aggressively cut emissions. They contend that EPA is legally obligated to drive down climate pollutants. The official, meanwhile, described an EPA under Trump that focuses not on climate change but on the agency's "core mission" — conventional air and water pollution.

The official faced a string of questions from reporters about whether the president and his advisers believe that humans are causing climate change.

"I think the president understands there's a disagreement over the policy response, and we're gonna see that in the order tomorrow. We're taking a different path," the official said.

When pressed on whether Trump believes in man-made warming, the official said, "Sure, yeah."

A campaign promise checked off

Another reporter asked if the official believes that sea-level rise could cause economic damage to major cities like Miami, New York and New Orleans, as scientists are warning.

"I'd like to see the research. Sure, that would be good. Show it to me," the official said.

The reporter replied: "So are you saying there's not rising sea levels?"

The official answered: "I didn't say that all. I want to see the study."

The president has sent inconsistent signals about his views of human-caused climate in the past 18 months, saying in December 2015 that it's a "hoax," and a year later that there is some "connectivity" between people's actions and warming.

Today's order ushers a White House that is still reeling from last week's remarkable legislative loss on health care into the embracing arms of the coal industry. Trump vowed last May to revive jobs in the hard-hit towns of Appalachia by erasing the Clean Power Plan.

"We're going to rescind all the job-destroying Obama executive actions," Trump said then. "OK, remember that. We're going to save the coal industry. We're going to save that coal industry, believe me. We're going to save it."

He promised to revoke the climate rules within 100 days of taking office. It's day 68.

E&E News
http://www.eenews.net/climatewire/2017/03/28/stories/1060052178
Was the climate rule really bad for the economy?
By Emily Holden 3/28/17

As President Trump today pulls the first strings in unraveling President Obama's signature climate change regulation, he will claim he's saving Americans from skyrocketing electricity bills and putting coal miners back to work.

In truth, that's hard to show.

Experts say it's difficult to get more than a rough estimate of how the Clean Power Plan would influence power costs, since natural gas and renewable energy prices play a role, as do state choices about trading systems.

Canceling the first-ever standards to reduce emissions from power plants is also unlikely to revive the dying coal industry, although it may keep some jobs in western U.S. mines from disappearing, according to the U.S. Energy Information Administration.

While economic studies on the rule have varied wildly, the Trump administration is relying on one paid for by the coal lobby and conducted by NERA Economic Consulting. NERA found that the Clean Power Plan could cause double-digit electricity price increases in many states. In a briefing yesterday, the White House cited that finding and argued that it couldn't pursue any policy that "puts the economy at risk."

Supporters of the Clean Power Plan, however, point to studies that show people would save money on electricity under the rule. They believe the Clean Power Plan would spur energy savings and result in lower bills. U.S. EPA and EIA came in somewhere in between, estimating that electricity prices would rise slightly at first but fall later. EPA thought they would be lower than without the rule by 2030.

The huge number of unknowns makes it "very easy for folks to cherry-pick desired results," said Noah Kaufman, a climate economist with the World Resources Institute who worked for the Obama administration. NERA assumed much higher costs for wind and solar power than did groups like MJ Bradley & Associates and Synapse Energy Economics, Kaufman noted in a recent analysis.

Despite the wide range of estimates, Kaufman said he hasn't seen any study that "makes a compelling and independent case to show that the economic effects are anything other than just noise in comparison to the economy as a whole."

Industry groups disagree, and they believe the costs of the rule would be higher than any possible benefits.
A recent study by NERA for the U.S. Chamber of Commerce and the American Council for Capital Formation found that meeting the Paris climate pledge would cost the average American household up to $160 a year and eliminate up to 440,000 jobs by 2025 (*Greenwire*, March 16). Environmental groups attacked those numbers as unreasonable, saying the researchers intentionally picked the most expensive ways to comply. The chamber says it was being realistic about how the United States might regulate different sectors based on legal confines.

As those types of debate rage on, Trump today will claim a victory for cash-strapped Americans and fossil fuel workers. But the actual economic impact of his actions will be hard to decipher.

When ideology mixes with economics

Observers might assume that the true cost of climate action would fall in the middle of the range of estimates. Researchers warn against that.

"Across all the years I've looked at it, it's not necessarily in the middle," said Tom Wilson, a senior program manager at the Electric Power Research Institute who has been studying climate policy analyses since the 1980s and has witnessed the unexpected natural gas boom and rapid declines in renewable power costs.

"The sort of key thing is that all types of strange things can happen," he said.

Wilson in his presentations explains how analysts in the 1980s estimated the level of global carbon emissions for 2000 and nailed it. They got all the inputs wrong, believing before the Chernobyl meltdown that nuclear power would expand quickly and thinking that Africa would use more power than China. But somehow all the figures balanced out.

There is similar uncertainty in the power sector now. Cheap natural gas has pushed coal and zero-carbon nuclear power offline. It's unclear whether people will really want to buy electric vehicles even when they cost the same as traditional ones. They might not like the way the cars accelerate or could cling to range anxiety, Wilson explained.

"Fundamental issues like that would dictate the cost of a climate policy," he said.

Environmental advocates will also note that many studies don't consider the economic benefits of reducing carbon emissions and spurring other countries to do so, as well. They say policymakers should consider lowered public health costs, avoided infrastructure expenses and savings from curbing the intensity of extreme weather events.

While the exact costs of the Clean Power Plan are hard to pin down, soldiers on both sides of the political debate insist they know how the rule would play out. That's an age-old strategy.

When the House passed cap-and-trade legislation in 2009, and the Senate was considering it, some models showed that the legislation would have been economically manageable, recalled Greg Dotson, who worked for former Rep. Henry Waxman (D-Calif.), a co-author of the bill. Dotson cited one government study that found the cap-and-trade plan would have slowed the growth of the gross domestic product, but only by a few months and not for decades.

Dotson said critics misused some modeling to make their arguments that the measure would be bad for the economy. He said models also almost never adequately assessed the cost of failing to address climate change and exaggerated the importance of small effects projected to occur years in the future. For example, during the debate in 2009, opponents posted stickers on gas pumps warning of immediate price spikes that weren't projected to occur until 2030.

"When you start thinking about it in those terms, models show that it's possible to craft climate change policies in which the costs are small but the benefits are huge," he said.

At the time, it was mainly pundits and those in conservative circles citing industry studies against cap and trade. Now, the president is using such assessments to back up his executive actions.
Dotson said that could be helpful, in giving people a chance to do some fact-checking.

"The problem with whisper campaigns that take place by industry outside of Washington, D.C., is sometimes they're quite hard to rebut," Dotson said. "When something comes from the president's mouth or Administrator Pruitt's mouth ... it gives experts something to really focus on."
Public Citizen yesterday was already taking aim at Pruitt's comments on ABC News on Sunday that climate policies cause electricity rates to increase.

'Coal still has a role to play'

Part of why Clean Power Plan assessments are so hard is because EPA would have given states wide latitude in how to meet their goals, including by using carbon trading.

Before the courts stalled the rule, most states were considering carbon trading, which would have lowered costs, according to various studies by regional grid organizations.
To be sure, costs of the rule would vary around the country, likely hitting coal-heavy states that have been slower to transition away from fossil fuels the hardest.

Market realities are hitting states in the West particularly hard as they try to navigate coal plant closures as companies no longer find the fossil fuel cost-competitive.

Scott Segal, an industry lawyer at Bracewell LLP, said that while it's "always difficult for the government to establish a program that can expand or save any specific industry," the government can "remove obstacles."

He argued that while natural gas is cheap and renewable power is growing cheaper, "coal still has a role to play."

No power company in the country is looking to invest in a new coal plant. But Segal said that "market demands and unforeseen circumstances could spell a resurgence for coal," if the government gets the regulatory approach right.

E&E News
http://www.eenews.net/eedaily/2017/03/28/stories/1060052163
Staff awaits trump with trepidation
By Kevin Bogardus 3/28/17

Many U.S. EPA staff members are gritting their teeth for President Trump's visit today.

The president plans to visit the agency's Washington headquarters this afternoon to sign his long-anticipated executive order to boost energy production and target environmental regulations, including the Clean Power Plan.

Trump — who has proposed a massive 31 percent, or $2.6 billion, budget cut for EPA, which could result in 3,200 fewer jobs at the agency — is not a popular figure among its employees.

After his election last year, many EPA workers were upset, worried about the future of their jobs and the agency itself. On the campaign trail, Trump pledged to dismantle EPA. And last week in Kentucky, he said Administrator Scott Pruitt "would turn the EPA from a job killer into a job creator."

Consequently, gallows humor has become prevalent at the agency.

"Coming to EPA? Are you sure he's not going across the street to have lunch at Trump Hotel?" said one career EPA employee when told about Trump's visit to agency headquarters.

Across the street from EPA's William Jefferson Clinton Federal Building is the Trump International Hotel, where the president has already dined a few times since his inauguration.

That career employee predicted Trump would receive a chilly reception from staff, with many staying in their cubicles rather going to the president's signing of the executive order — if they're invited at all.

"There is going to be bewilderment and shock. Not a lot of excitement. Just pissed-off people," said the employee. "We're going to be at our desks. We'll not be going down there."

A presidential visit will also require heightened security. According to an internal email sent to agency employees yesterday and obtained by E&E News, the Secret Service and the Federal Protective Service will implement "multiple security measures" for the building, "and there will be an increased security presence at the Federal Triangle Complex."

With some entrances closed all day, employees will not be allowed on the first floor of the Clinton East building. The agency's mailroom and print shop will also be closed for the day.

In addition, some EPA employees working in an area facing the courtyard "must close window blinds beginning no later than 10:00 am (and remain closed all day)," said the email.

Security was likely as tight for President Obama's visit to EPA in January 2012. The mood then, however, was celebratory.

Back then, agency employees crowded into the Andrew W. Mellon Auditorium to cheer on the 44th president. Obama thanked workers for their dedication and said environmental protection and economic benefits can go hand in hand.

"I do not buy the notion that we have to make a choice between having clean air and clean water and growing this economy in a robust way," Obama said. "I think that is a false debate" (*E&E News PM*, Jan. 10, 2012).

Pruitt has offered similar sentiments as EPA chief. Nevertheless, it hasn't done much to improve relations between the administration's leadership and the agency's workers.

"Oh, God," said one former EPA official when told about Trump's visit. "There will be certainly a different dynamic than when Obama visited."

The ex-official added, "There is probably no agency and political leader that feel this hostile toward each other, including the CIA."

Trump of course visited the intelligence agency the day after his inauguration. Speaking about his inaugural crowd size and election victory before the CIA's Memorial Wall, Trump sparked criticism for his campaignlike speech.

The president's visit to EPA could lead to similar reviews. Asked if Trump's stopping by EPA headquarters to sign an order to roll back agency rules was a poke in the eye to employees, one union leader said it was.

"It definitely is. Otherwise, he would do this from the comfort of the White House," said John O'Grady, president of American Federation of Government Employees Council 238, which represents thousands of EPA employees. "I'm speechless. This is like someone's worst nightmare."

CNN
http://www.cnn.com/2017/03/27/politics/trump-climate-change-executive-order/
In executive order, Trump to dramatically change US approach to climate change
By Dan Mercia 3/28/17 7:38 AM

Washington (CNN) President Donald Trump will sign a sweeping executive order Tuesday at the Environmental Protection Agency, which looks to curb the federal government's enforcement of climate regulations by putting American jobs above addressing climate change.

The order represents a clear difference between how Trump and former President Barack Obama view the role the United States plays in combating climate change, and dramatically alters the government's approach to rising sea levels and temperatures -- two impacts of climate change.

A White House official briefed on the plan said Monday the administration believes the government can both "serve the environment and increase energy independence at the same time" by urging the EPA for focus on what the administration believes is its core mission: Clean air and clean water.

More important than regulating climate change, the official said, is protecting American jobs.

"It is an issue that deserves attention," the official said of climate change. "But I think the President has been very clear that he is not going to pursue climate change policies that put the US economy at risk. It is very simple."

Tuesday's order will initiate a review of the Clean Power Plan initiative, rescind the moratorium on coal mining on US federal lands and urge federal agencies to "identify all regulations, all rules, all policies ... that serve as obstacles and impediments to American energy independence," the official said.

Specifically, the order will rescind at least six Obama-era executive orders aimed at curbing climate change and regulating carbon emissions, including Obama's November 2013 executive order instructing the federal government to

prepare for the impact of climate change and the September 2016 presidential memorandum that outlined the "growing threat to national security" that climate change poses.

"The previous administration devalued workers by their policies," the official said. "We are saying we can do both. We can protect the environment and provide people with work."

The White House official went on to argue that the best way to protect the environment is to have a strong economy, noting that countries like India and China do less to protect the environment.

"To the extent that the economy is strong and growing and you have prosperity, that is the best way to protect the environment," the official said.

The executive order also represents the greatest fears climate change advocates had when Trump was elected in November 2016.

"These actions are an assault on American values and they endanger the health, safety and prosperity of every American," Tom Steyer, the president of NexGen Climate, said in a statement. "Trump is deliberately destroying programs that create jobs and safeguards that protect our air and water, all for the sake of allowing corporate polluters to profit at our expense."

Andrew Steer, CEO of the World Resources Institute, said that the executive order shows Trump is "failing a test of leadership to protect Americans' health, the environment and economy."

But as much as Democrats and climate advocates will decry it, Trump's executive order follows the President's past comments about climate change. Though Trump told The New York Times during the election that he has an "open mind" about confronting climate change, he also once called it a hoax.

"The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive," Trump tweeted in November 2012.

"I will also cancel all wasteful climate change spending from Obama/Clinton," Trump said in October 2016.

The changes, the official said, do not mean the Trump administration will not look to protect the environment any longer, the official said, but when pressed about the human impact on climate change and Trump's beliefs, the official was reluctant to say whether all government officials in the Trump White House believe humans cause climate change.

"I think there are plenty of rules on the books already. We will continue to enforce that provide for clean air and clean water. And that is what we are going to do," the official said. "The President has been very clear that he wants the EPA to stick to that basic core mission that Congress set out for it."

The changes also reflect the view of EPA Administrator Scott Pruitt, who routinely sued the organization he now leads during his time as the Attorney General of Oklahoma. In an interview with CNBC earlier this month, Pruitt argued incorrectly that carbon dioxide isn't the "primary contributor" to climate change, a comment that goes against most scientific research.

This executive order is also an attempt by the Trump administration to make good on its promise to bring more coal jobs back. The official said that Obama's regulations "were not helpful" to the coal industry and these reversals are the President honoring "a pledge he made to the coal industry."

"We are going to put our coal miners back to work," Trump said at a March 2017 event in Kentucky. "They have not been treated well, but they're going to be treated well now."

He added: "The miners are coming back."

Huffington Post
http://www.huffingtonpost.com/entry/trump-climate-executive-order-environmentalists_us_58d9ec2ae4b018c4606ae900
Environmentalists Vow To Fight Donald Trump's 'Dangerous,' 'Embarrassing' Climate Rollback
By Nick Visser 3/28/17, 5:47AM

Environmentalists and former White House officials on Monday slammed President Donald Trump's impending executive order that would undue much of the work his predecessor has done to combat climate change.

Trump was due to sign the Energy Independence Executive Order on Tuesday, which will target former President Barack Obama's signature Clean Power Plan and open up federal land to coal development. But environmentalists are not giving up without a fight and plan to protest the wide-ranging order that has been met with fierce criticism.

Gina McCarthy, a former administrator of the Environmental Protection Agency, called it a "dangerous," order that flies "in the face of EPA's mission."

"They want us to travel back to when smokestacks damaged our health and polluted our air, instead of taking every opportunity to support clean jobs of the future," McCarthy said in a statement. "This is not just dangerous; it's embarrassing to us and our businesses on a global scale to be dismissing opportunities for new technologies, economic growth, and US leadership."

EPA Administrator Scott Pruitt, a noted climate change denier, said Tuesday's order would "address the past administration's effort to kill jobs throughout the country" — a statement that couldn't be more different from the agency's stance just three months ago.

Janet McCabe, the former head of the EPA's Office of Air and Radiation, said the agency "has an obligation to address carbon pollution" and challenged Pruitt's recent assertion that carbon emissions were not the cause of climate change.

"Congress put the Clean Air Act in place to protect Americans from air pollution, and there is no doubt greenhouse gases are air pollution — the science makes that crystal clear and the Supreme Court has confirmed it as a matter of law," she said in a statement.

Environmentalists vowed to fight the effects of the rollback and planned a protest in Washington, D.C., for Tuesday evening.

"Trump's attack ignores reality — not just the reality of the climate crisis, but the reality that the clean energy economy is rapidly growing in both red and blue states, creating jobs and safeguarding our air and water," Sierra Club executive director Michael Brune said in a statement. "Trump can't reverse our clean energy and climate progress with the stroke of a pen, and we'll fight Trump in the courts, in the streets, and at the state and local level across America to protect the health of every community."

World Resources Institute president Andrew Steer said the Trump administration was "taking a sledgehammer to U.S. climate action," and with the signing of a pen, the president will "push the country backward."

"Make no mistake: This Executive Order will undermine people's health and the U.S. economy. It hands moral authority and global leadership over to others, leaving America behind," Steer said in a statement.

Economists and energy executives have already casts doubts on the aim of the executive order and Trump's plans to restore thousands of coal mining jobs.

"I really don't know how far the coal industry can be brought back," Robert Murray, the head of one of the countries largest coal mining companies, told The New York Times.

Washington Times
http://www.washingtontimes.com/news/2017/mar/27/paris-climate-treaty-faces-us-exit-after-donald-tr/
Trump's executive action on Clean Power Plan signals U.S. exit from Paris climate treaty
By Ben Wolfgang 3/27/17

President Trump's executive action Tuesday to begin unraveling the Clean Power Plan may also signal America's de facto exit from the landmark Paris climate treaty — former President Barack Obama's signature environmental achievement.

The Clean Power Plan, the first set of national limits on greenhouse gas pollution from power plants, is crucial to the U.S. meeting President Obama's pledge to cut emissions by at least 26 percent by 2025.

While Mr. Trump has yet to formally pull out of the Paris deal — a nonbinding agreement with no enforcement mechanisms other than public shaming — his move Tuesday essentially guarantees the U.S. won't meet the ambitious target.

"It was extraordinarily unlikely we would've met President Obama's Paris pledge under the best of circumstances. But clearly, if the Trump administration goes through with what's on the table so far, it will be impossible to meet the pledge," said Stephen Eule, vice president for climate and technology at the U.S. Chamber of Commerce's Institute for 21st Century Energy.

The Clean Power Plan, which was stayed by the Supreme Court last year and has not gone into full effect, calls for a 30 percent reduction in carbon emissions from the power sector by 2030, and would greatly shrink coal's share of electricity generation in the process.

That reduction is central to meeting the broader Paris goal, as are other regulations now under review, including fuel economy standards for automobiles.

Within the administration, there's an ongoing debate over whether to stay in the Paris deal or formally withdraw. The agreement itself remains highly controversial, not only because of the onerous measures the U.S. would have to put in place to meet its targets but also because it gives China, the world's biggest polluter, a free pass for the next 13 years.

Under Paris, China has to do virtually nothing until 2030, when the country says its greenhouse gas emissions will peak and then slowly begin dropping each year thereafter.

India, another major polluter, also faces no targets for more than a decade.

There's no indication that a decision on the Paris deal is on the immediate horizon, but top officials within the administration increasingly are speaking out. Even without technically disavowing the deal, it's becoming clear the White House has no intention whatsoever of honoring Mr. Obama's commitment.

"What was wrong with Paris was not just that it ... failed to be treated as a treaty, but China and India, the largest producers of CO2 internationally, got away scot-free. They didn't have to take steps until 2030," Environmental Protection Administrator Scott Pruitt told ABC News over the weekend.

"So we've penalized ourselves through lost jobs, while China and India didn't take steps to address the issue internationally. So Paris was just a bad deal, in my estimation," he said.

A senior White House official on Monday evening said it's "still under discussion" whether to leave formally the Paris agreement, and wouldn't elaborate on how the administration could possibly meet its commitment while eliminating rules to cut emissions.

In addition to the Clean Power Plan, the official also confirmed that Tuesday's executive order will eliminate Obama administration estimates on the "social cost of carbon," will end a federal moratorium on new coal leases and will take other steps to reduce regulations and promote American energy independence.

The order, however, is by no means the final word on the Clean Power Plan.

The EPA still must hold public hearings, accept public comments, consult with stakeholders and likely face numerous lawsuits in its effort to eliminate the Clean Power Plan altogether.

Specialists have said it will take at least one year, possibly longer, to remove it from the books completely.

Exiting the Paris deal is a different story. Because the agreement was never submitted to the Senate to be approved as a formal treaty, there's nothing stopping the administration from quickly ending U.S. participation.

Supporters of the Paris deal say the White House is sending the wrong signal to the rest of the world by approving new fossil fuel projects like the Keystone XL oil pipeline while backing down on emissions-reduction goals.

"The Trump administration says 'yes' to sending the dirtiest Canadian oil to Latin America and China after it crosses the American plains, but 'no' to providing American leadership as China and Latin America make historic commitments to the global agreement on climate change," Sen. Edward J. Markey, Massachusetts Democrat, said Monday.

Indeed, there would seem to be little reason for the rest of the world to accept U.S. leadership on climate issues if the administration abandons Paris.

"We lose any ability, any moral authority, to say to any other country, 'You have to clean up your act,'" said Christine Todd Whitman, the former Republican governor of New Jersey and EPA administrator during the George W. Bush administration.

But some analysts say the U.S. can retain a global voice on emissions even while undoing regulations, like the Clean Power Plan, that would hamper economic growth at home.

"It would be possible ... to keep our seat at the table while still making fundamental changes to our domestic regulations. This position is all the more reasonable in light of the fact that market forces are already advancing the ball toward reasonable greenhouse gas goals," said Scott Segal, a partner at Washington's Bracewell law firm who specializes in energy and environmental issues.

Washington Post
https://www.washingtonpost.com/national/health-science/trump-moves-decisively-to-wipe-out-obamas-climate-change-record/2017/03/27/411043d4-132c-11e7-9e4f-09aa75d3ec57_story.html?utm_term=.c54766528a9c
Trump moves decisively to wipe out Obama's climate change record
By Juliet Ellperin and Brady Dennis 3/27/17, 11:01PM

President Trump will take the most significant step yet in obliterating his predecessor's environmental record Tuesday, instructing federal regulators to rewrite key rules curbing U.S. carbon emissions.
The sweeping executive order also seeks to lift a moratorium on federal coal leasing and remove the requirement that federal officials consider the impact of climate change when making decisions.

The order sends an unmistakable signal that just as President Barack Obama sought to weave climate considerations into every aspect of the federal government, Trump is hoping to rip that approach out by its roots.

"This policy is in keeping with President Trump's desire to make the United States energy independent," said a senior administration official who briefed reporters on the directive Monday evening and asked for anonymity to speak in advance of the announcement. "When it comes to climate change, we want to take our course and do it in our own form and fashion."

Some of the measures could take years to implement and are unlikely to alter broader economic trends that are shifting the nation's electricity mix from coal-fired generation to natural gas and renewables. The order is silent on whether the United States should withdraw from the 2015 Paris climate agreement, under which it has pledged to cut its greenhouse gas emissions between 26 and 28 percent by 2025 compared to 2005 levels, because the administration remains divided on that question.

The order comes after several moves by Trump to roll back Obama-era restrictions on mining, drilling and coal- and gas-burning operations. In his first two months as president, Trump has nullified a regulation barring surface-mining companies from polluting waterways and set aside a new accounting system that would have compelled coal companies and other energy firms to pay more in federal royalties.

The administration also has announced it will reconsider stricter fuel-efficiency standards for cars and light trucks and has approved two major oil pipelines, Dakota Access and Keystone XL, that Obama had halted.

Accelerating fossil-fuel production on federal lands and sidelining climate considerations could lead to higher emissions of the greenhouse gases driving climate change and complicate a global effort to curb the world's carbon output. But Trump has repeatedly questioned whether climate change is underway and emphasized that he is determined to deliver for the voters in coal country who helped him win the Oval Office.

"He's made a pledge to the coal industry and he's going to do whatever he can to help those workers," the senior administration official said.

U.S. coal jobs, which number about 75,000, have been declining for decades. The official did not predict how many jobs might be spurred by this shift in policy.

Legal fight possible

The centerpiece of the new presidential directive, telling the Environmental Protection Agency to begin rewriting the 2015 regulation that limits greenhouse-gas emissions from existing power plants, will trigger a laborious rulemaking process and a possible legal fight.

The agency must first get permission from the U.S. Court of Appeals for the D.C. Circuit, where the rule is tied up in litigation, to revisit the matter. Then, agency officials will have to justify reaching the opposite conclusion of the Obama EPA, which argued it was technically feasible and legally warranted to reduce carbon pollution by about one-third by 2030, compared with 2005 levels.

"So, for the president, even if he would like to revoke the Clean Power Plan, he doesn't have legal authority to do that," said Jeffrey Holmstead, a partner at the Bracewell law firm who opposes the Obama-era rule. Holmstead, who headed the EPA's air and radiation office under President George W. Bush, said he thinks the agency can justify reversing the regulation. But "they have to justify why they have changed," he added.

While environmental groups decried Trump's move, mining officials welcomed it as an important course correction in federal energy policy.

"This rule was an unlawful attempt to radically transform the nation's power grid, destroying valuable energy assets and leaving our economy more vulnerable to rising power prices — all for an insignificant environmental benefit," said Hal Quinn, president and chief executive of the National Mining Association.

Environmentalists vowed to fight the executive order in court and press ahead with their goals on the state level.

David Doniger, director of the Natural Resources Defense Council's climate and clean-air program, said unwinding the Clean Power Plan will not happen quickly, no matter what the president wants. "Tearing the rules down require going through the same process it took to build them up," Doniger said. "We will make them face the music at every step."

Christopher Field, a professor at Stanford University's Wood Institute for the Environment, said in an email that the directive carries long-term risks, rather than immediate ones. "Some are risks from eroding the position of U.S. companies in the clean energy sector," Field said. "Others are from the loss of irreplaceable natural heritage that is put in jeopardy by ill-conceived policies."

The president will also instruct the Interior Department to rewrite a 2015 rule, currently stayed in court, that imposes restrictions on hydraulic fracturing on federal and tribal lands. The directive will also make it easier to flare methane in oil and gas operations on federal land, by triggering the review of a rule the Interior Department finalized in November.

More immediate actions

Other aspects of the executive order can take effect immediately, though it is unclear how quickly they will translate into greater coal extraction. One section overturns a 2016 White House directive to consider climate change when agencies conduct reviews under the National Environmental Policy Act, a sweeping law that informed any federal decisions that have a significant environmental impact.

Another provision instructs Interior's Bureau of Land Management to lift a freeze on federal coal leasing. That moratorium has been in effect since December 2015.

Tom Sanzillo, director of finance for the Institute for Energy Economics and Financial Analysis, said in an interview that the move "becomes a largely politically symbolic measure for right now" because other, lower-carbon sources of energy are out-competing coal. He noted that U.S. coal consumption has declined 27 percent since 2005, from 1.02 billion tons to 739 million tons in 2016, its lowest level in nearly four decades.

"They're not going to reverse the fundamental economic law here," Sanzillo said. "There's no market signal that's telling them they should be mining more coal."

Still, regulatory relief could make some coal firms, nearly 50 of which have filed for bankruptcy since 2012, somewhat more economically viable. Some of the sector's biggest companies — including Arch Coal, Peabody Energy and Alpha Natural Resources — are just now emerging from bankruptcy protection.

Ethan Zindler, head of U.S. research at Bloomberg New Energy Finance, said in an email that solar and wind are competitive with coal in some parts of the country and that natural gas ranks as the lowest-cost source of electricity generation overall. The sector that could suffer the greatest hit from the elimination of the Clean Power Plan is nuclear energy, which provides about a fifth of U.S. businesses' and households' power.

"Many of the 100 or so U.S. plants are aging, and approximately a third are economically uncompetitive today," Zindler said. Without stricter federal emissions limits, he added, "there may be little to stop the retirement of these plants in coming years and their replacement with a combination of gas, wind and solar."

Separately, Trump has instructed federal officials to abandon the practice of factoring in the impact of climate change — what is dubbed "the social cost of carbon" — in their policymaking decisions. That calculus, which is currently set at $36 per ton of carbon dioxide, aims to capture the negative consequences of allowing greenhouse-gas emissions to continue to rise. But some conservatives have criticized it as too sweeping.

Federal officials will return to the traditional cost-benefit analysis the George W. Bush administration adopted nearly 15 years ago, which has a much lower cost associated with carbon emissions.
As Trump seeks to scale back federal limits on greenhouse gas emissions, states and cities are likely to take on a larger role in charting the course forward.

An analysis by the Rhodium Group, an economic consulting firm, found that Trump's forthcoming executive order would slow the country's shift away from carbon-emitting sources of energy. It found after Trump's action, the United States would be 14 percent below its 2005 emissions levels by 2025, compared to 21 percent below that mark had current Obama-era policies remained in place.

Tim Profeta, who directs Duke University's Nicholas Institute for Environmental Policy Solutions, said regulators from more than half-dozen states in the Southeast are now talking about how to chart their own path forward. Having met for nearly three years, the group stopped discussing how to comply with the Clean Power Plan after November's election, but it is still talking.
"We are now talking about the evolution of the power sector in an environment of uncertainty," Profeta said in an interview. "We're seeing the beginning of states taking control of their destiny."

The Hill
http://thehill.com/policy/energy-environment/325977-what-to-watch-for-in-trumps-climate-change-order
What to watch for in Trump's climate change order
By Devin Henry and Timothy Cama 3/27/17, 4:01PM

President Trump will sign an executive order on climate change Wednesday, opening a new front in his battle against former President Obama's environmental legacy.

The action will address Trump's campaign promises and is expected to knock out the Obama administration's landmark climate rule, among other things.

Here are five things to watch when Trump releases the long-awaited executive order on Tuesday.

How far does he go?

The order is expected to be a broad assault on key aspects of Obama's climate change policies.

Trump is expected to order the Environmental Protection Agency (EPA) to formally consider repealing its Clean Power Plan, a rule created to cut power sector emissions. He is also likely to lift a moratorium on new coal mining leases on public land.

Sources told The Hill last week that the order would also target oil and gas drilling rules and the climate change metrics that Obama built into government environmental assessments and regulations, among other things.

Trump will also direct agencies to begin considering actions they can take to encourage energy production, according to Bloomberg.

Some parts of the order will take effect immediately, while others will take time. Trump can't immediately scrap the Clean Power Plan, for instance, as the EPA will have to conduct a formal rulemaking process that could take up to a year.

What will the battle lines be?

Don't expect environmentalists to immediately challenge Trump's action in court.

Lawsuits against the order are certain, but environmental advocates can't file them until the EPA proceeds through the regulatory process.

Much of the coming legal battle is likely to center on the Clean Power Plan. The rule is already at the center of a major lawsuit, with fossil fuel companies, industry groups and coal-friendly Republican states suing to undo the regulation.

That litigation will likely freeze after Trump signs the executive order but will restart again as the process moves forward.

Environmentalists are also likely to fight the cancellation of the coal moratorium, a policy Obama's Interior Department implemented in part to address complaints that the government was not doing enough to account for the climate impact of the fuel's use.

Will the Paris climate pact be mentioned?

The president's order is expected to tread lightly on one major piece of Obama's climate agenda: the Paris agreement.

The non-binding pact was negotiated in 2015 by nearly 200 countries, through the United Nations, with significant leadership from Obama. Each country pledged its own greenhouse gas emissions limits; Obama promised a 26 percent to 28 percent cut in the United States' emissions by 2025.

While Trump promised to "cancel" the accord during last year's campaign, he's been under pressure from some in his administration. In particular, his daughter Ivanka and her husband Jared Kushner — one of Trump's closest advisers — support the accord and convinced Trump to strike language from the order that would have been critical of it, according to The Wall Street Journal.

But while the United States might stay in the pact, Trump's executive order striking climate policies could make it difficult to meet the 2025 goal.

Trump may instead seek to reduce the United States' commitments under the agreement, something that has the support of Trump allies in Congress like Rep. Kevin Cramer (R-N.D.).

Will the order help jobs?

Trump and the White House have touted the order as being designed to help produce jobs in the energy industry.

"We can be both pro-jobs and pro-environment," EPA Administrator Scott Pruitt said Sunday on "This Week with George Stephanopoulos."

"The executive order will address the past administration's efforts to kill jobs across this country through the Clean Power Plan."

But there are indications the order won't pack quite the punch the White House is promising.

Undoing the power plant rules, for instance, is designed to help coal workers. But the industry's decline is much more closely tied to market forces like cheap, prevalent natural gas than federal regulations, something that even the coal industry acknowledges.

"I suggested that he temper his expectations," coal executive Bob Murray told The Guardian on Monday. "Those are my exact words. He can't bring them back."

The White House insists its new action will have an impact.

Asked if the order will bring back coal jobs, Pruitt said Sunday, "I think absolutely it will. It will bring back manufacturing jobs across the country, coal jobs across the country."

How will the White House unveil the order?

Trump is aiming to unveil the order with his traditional showman's touch.

The White House says Trump will go to EPA headquarters in downtown Washington, D.C., to sign the directive.

In addition to Pruitt, the administration may bring in coal miners to celebrate the signing, as Trump did when he signed legislation to undo the Interior Department's rule to protect streams from mining pollution.

Members of Congress, who have long looked to halt Obama's climate actions, are likely to look on as well.

The order could represent a major turning point in American energy policy, fulfilling several of the president's campaign promises.

The Hill
http://thehill.com/policy/energy-environment/326047-trump-to-undo-obamas-climate-change-agenda
Trump to undo Obama's climate change agenda
By Devin Henry 3/27/17, 11:00AM

President Trump will use an executive order on Tuesday to dismantle to the Obama administration's climate change agenda.

The order will compel the Environmental Protection Agency (EPA) to review the Obama administration's chief climate rule for power plant emissions, the 2015 Clean Power Plan, a White House official said on Monday night. The White House opposes that rule, signaling its eventual termination.

The action will order several other federal agencies to undo the previous administration's climate change work: it will tell the Interior Department to end a moratorium on new coal leasing on federal land, the official said, and the Obama administration's assault on methane emissions — outlined in early 2014 and overseen by Interior and EPA — will be ended, as well.

A major hydraulic fracturing regulation from the Bureau of Land Management will be reviewed under the order. It will also end President Obama's climate action plan, the main 2013 directive outlining the federal government's response to climate change.

Trump's Tuesday order will represent a reset of the federal government's policies on climate change. It will not address several major environmental rules issued during Obama term, including an update on ozone pollution or mercury

standards at power plants. But efforts initiated by Obama — who made addressing climate change a key goal of his second term — will disappear.

“There are plenty of rules on the books already, that we will continue to enforce, that provide for clean air and clean water and that’s what we’re going to do,” the White House official told reporters on Monday night.

“I think the president has been clear he wants the EPA to stick to that basic core mission that Congress laid out for it.”

One thing the order will not address is the United States’s involvement in the Paris climate deal, a global pact to cut greenhouse gases. Obama was a driving force behind that agreement, pledging a 26 percent to 28 percent reduction in U.S. emissions by 2025.

But the official said the administration has a "different view about how you should to address climate policies as the United States and we’re going to go in a different direction."

Trump doubts the broad scientific consensus — affirmed by the vast majority of climate scientists — that human activity contributes to and has exacerbated a warming trend around the globe.

He has stacked his administration with officials who agree with his views. EPA Administrator Scott Pruitt, for example, said earlier this month that he does not believe carbon dioxide is a “primary contributor” to global warming, a conclusion at odds with the scientific research of his own agency.

Trump's order will not nix the Obama administration’s 2009 finding that carbon dioxide is a threat to the United States, a formal conclusion that underpins federal rules on the matter.

"But the administration will interpret it differently than Obama did. That “endangerment finding,” Trump’s administration argues, relates only to carbon emissions from cars, not carbon emissions as a whole, and therefore does not apply to the power plant rules Obama issued.

The official said climate change is an “issue that deserves attention,” but there is no indication from the contents of the order that Trump will focus on it.

Instead, the White House is framing the order as one to help the U.S. economy -- something Republicans, Trump and others in his administration have said is threatened by climate regulations.

“Energy independence: that’s the goal,” the official said. “The president understands there’s a disagreement over the policy response and you’ll see that in the order tomorrow. We’re taking a different path."

Environmentalists have promised a strong response.

Groups have planned a protest on Tuesday night, an early sign that they will fight back against the changes.

"On the heels of the three hottest years on record, President Trump is reversing the biggest steps our country has taken to fighting climate change, League of Conservation Voters President Gene Karpinski said.

“Donald Trump may care more about corporate interests, but the people of this country care about a safe, clean and healthy environment and they will not let him get away with destroying it.”

Environmental lawyers have said they will pore over the regulatory review process in order to sue against it in the end.

"This order ignores the law and scientific reality," Trip Van Noppen, the president of the environmental law group Earthjustice, said in a statement.

"Dirty coal power is never coming back because it can't compete with clean energy and denial won't make climate change go away. Earthjustice will continue to defend clean air and progress on climate in court and out, and we will never back down from protecting our public lands."

The White House said it was preparing for a lengthy fight over the contents of the order.

"I bet a good deal that there will be litigation once the final review is undertaken," the official said. "It's going to take a while."

The action will rescind several other Obama directives issued by his administration.

An order asking federal agencies to consider climate impacts in normal environmental reviews will come off the books, and the administration will reconsider the "social cost of carbon" metric designed to assess the climate implications of government actions.

Other Obama policies — including those focusing on climate change adaptation and its impact on national security — will also come off the books.

The order will have federal agencies identify plans for expanding American energy production, something that will serve as a "blueprint" for the Trump administration's energy agenda.

The fossil fuel industry stands to benefit from the action. The coal sector, for instance, has lambasted the Clean Power Plan as a regulation designed to damage the industry, which produces a high-polluting fuel.

Oil and natural gas companies oppose the methane regulations as burdensome and duplicative, and they have fought them in court and in Congress.

But the order will not be a silver bullet, something even coal executive Bob Murray acknowledged this week.

"I suggested that he temper his expectations," Murray told The Guardian, noting market forces that have hurt his sector. "Those are my exact words. He can't bring [jobs] back."

InsideEPA
https://insideepa.com/daily-news/trump-order-requires-agencies-id-rules-stymie-energy-production
Trump Order Requires Agencies To ID Rules That Stymie Energy Production
By Abby Smith 3/27/17

President Donald Trump will sign a long-awaited executive order March 28 that a senior White House official says will begin to lay out a framework for the administration's energy and environment policy -- one that will prioritize energy production and eliminate climate or environmental policies that "put the U.S. economy at risk."

The forthcoming order "will look back and look forward," the official told reporters in previewing the order late March 27. The order, known as the "Energy Independence" executive order, will direct federal agencies to identify "all regulations, guidance and documents that serve as obstacles or impediments to U.S. energy production," the official said.

Agencies will be expected to come up with energy independence plans, which the White House will then review. "Those plans will serve as a blueprint for the administration going forward on energy policies," the official said.

Regarding climate change, the White House official suggested several Obama-era policies "don't reflect" Trump's agenda, and therefore will be immediately pulled back or subject to review.

The official indicated the administration wants to "take our own course and do" climate policy "in our own form and fashion."

Specifically, the order will target a wide range of Obama administration climate policies, largely mirroring what appeared in a draft summary of the order obtained by *InsideEPA/climate* and other news outlets.
The order will "initiate the review" of several regulations, including EPA's existing power plant greenhouse gas rule known as the Clean Power Plan and the companion rule for new sources. Both rules are currently subject to pending legal challenges in the U.S. Court of Appeals for the District of Columbia Circuit.

The document could also order the Department of Justice to ask the D.C. Circuit to hold litigation on the power plant rules in abeyance or remand the rules to the agency while administrative proceedings to rewrite them are underway.

The White House official said there is no timeframe associated with the review of the Clean Power Plan and other rules, but EPA Administrator Scott Pruitt "is ready to hit the ground running on it." The source also noted that the administration will have to go through the rulemaking process if it intends to rescind or revise the regulations and acknowledged there will likely be litigation over the end result.
Whether the process takes one, two or three years, "I don't know. It's going to take some time," the official said.

In addition, the White House official listed several other Obama-era policies that will undergo review -- including EPA's rule regulating emissions of the potent GHG methane from new oil and gas sources, as well as the Bureau of Land Management's (BLM) methane venting and flaring rule and its rule regulating hydraulic fracturing on public lands.

"All will be reviewed" based on "whether those reflect the policy priority at the beginning of the order," the official said, though the source did not specify what that priority would be beyond a focus on energy independence and "getting EPA back to its core mission."

NEPA Reviews

According to the White House official, the order will also rescind Obama White House Council on Environmental Quality guidance for how to account for climate impacts in National Environmental Policy Act (NEPA) reviews. "That guidance was widely opposed by a number of different industries," the official said, adding that the administration believes it goes "way beyond what NEPA requires."

The order will also target the Obama administration's social cost of carbon metric, and the related social cost of methane and social cost of nitrous oxide -- default values that agencies use to measure the benefits of rules that limit GHGs.

"The prior administration put out its own estimates, not in a very transparent fashion," the official said, adding the Trump administration believes the metrics violate "longstanding" Office of Management & Budget policy. Those metrics "will no longer stand," the source said.

In addition, the White House official said the order will target about six climate change-related executive orders and presidential memorandum from former President Barack Obama, including four orders related to climate adaptation and resilience, the 2013 memo putting forth the Climate Action Plan and a 2014 memo outlining a strategy to cut methane.

The order will also rescind the Department of Interior's moratorium on new coal leasing on federal lands.
The White House official said the order will not address how the Trump administration will proceed with the Paris Agreement, which the source said is "still under discussion."

It will also not address EPA's 2009 GHG endangerment finding, which underpins the agency's climate regulations and which many conservative groups have urged the Trump EPA to review. Just last month, the free-market Competitive Enterprise Institute asked EPA to review the GHG risk finding in a petition obtained by *Inside EPA*.

"Certainly if you look at the previous administration's" Paris Agreement pledge, "we have a different view about how you would address climate policy in the U.S.," the White House official said, adding that the Trump administration intends to go in a "different direction" but the emissions impact of that pathway is unclear.

The White House official emphasized that Trump "made a pledge" to help the coal industry. While it is true that such things like the low cost of natural gas and other market forces affect coal's success, "certainly government policy has a role, and to the extent he can have a beneficial effect, he's going to take it."

In addition, the White House official indicated the executive order would "lay out very clearly" how the Trump administration intends to approach climate policy. The source suggested the administration believes the most important factor is to "make sure you have a strong economy," noting that the United States has a "cleaner, healthier environment" than large developing countries like China.

The official also noted that the Trump administration will continue to enforce clean air laws that are "on the books" but will review "policies like the Clean Power Plan that we believe don't provide environmental protection." The source added that "whether it's clean coal, nuclear power, renewables . . . allowing all those to flourish is a good way to address the issue." -- *Abby Smith* (asmith@iwpnews.com)

Washington Examiner
http://www.washingtonexaminer.com/trumps-newest-order-looks-to-block-obamas-climate-legacy/article/2618606
Trump's newest order looks to block Obama's climate legacy
By John Siciliano 3/27/17 11:00 PM

President Trump will sign an executive order Tuesday to roll back the centerpiece of the Obama administration's climate change agenda, the Clean Power Plan, and cancel what Trump says are unnecessary rules on coal, oil and natural gas production that are harming economic growth.

The executive order is seen as central in meeting the president's campaign promises to help coal country rebound from the tens of thousands of job losses that the industry blames, in part, on restrictive environmental regulations.

A senior administration official told reporters on a call Monday that the order has the "twin goals" of both moving forward while also looking backward.

It "looks forward" by setting the stage for the "beginning strategy" in devising an energy policy framework for the nation, said the senior official. And it looks backward by eliminating regulations from the previous administration that hinder growth and energy production.

It will call on all agencies to conduct a comprehensive review of all rules to determine those that inhibit energy production, and report back to the White House in 180 days.

After that, the White House will sit down with the agencies to develop an energy "blueprint," the official told reporters.

The order will also direct the Environmental Protection Agency to review and, if necessary, redo climate regulations for existing fossil fuel power plants, called the Clean Power Plan, with the end goal of redacting the regulation. And, it will roll back climate regulations on new power plants, known as the New Source rule, which is called a "defacto ban" on building new coal-fired power plants in the country.

The clean coal technology required to meet the rule is cost prohibitive and not yet even commercially viable.

The rule directs the Justice Department to ask the D.C. Circuit Court of Appeals to hold in abeyance current lawsuits opposing the regulations. Nearly 30 states and hundred of groups, firms and companies are suing the agency over the power plant rules.

Rolling back the regulations would help keep coal power plants from prematurely closing down over the next decade. The review that EPA must do to comply with the Administrative Procedures Act could take years, as the official expects the review will be challenged in court.

In other areas, the rule takes aim at Obama-era regulations opposed by industry groups that are meant to control methane emissions from fracking wells.

Both the EPA and the Interior Department have regulations for essentially doing the same thing, limiting emissions of methane, which is a potent greenhouse gas that many scientists blame for causing manmade global warming through the burning of fossil fuels.

The methane regulations are part of President Barack Obama's broad climate agenda issued in 2013, called the Climate Action Plan. But the rule rescinds all six executive orders that make up the Climate Action Plan.

The order has faced weeks of delays because of complex legal questions regarding the Clean Power Plan and EPA climate rules, which are currently under review by the D.C. Circuit Court of Appeals.

The order is "legally complex," and the White House was being "very careful" due to the ongoing litigation, the official said.

He said EPA Administrator Scott Pruitt is "ready to hit the ground running" in conducting the climate rule at the agency. But he said it seems clear there will be litigation, which could take years to resolve.

Big environmental groups like the Natural Resources Defense Council and Sierra Club will likely initiate opposition in the courts to the executive order and its actions.

NRDC President Rhea Suh began ramping up support for her group's legal response to Trump's assault on EPA in November. Her group is already suing against Trump's approval of the Keystone XL pipeline on Friday.

Meanwhile, Sen. Ed Markey, D-Mass., an ardent supporter of steps to control climate change, plans to introduce legislation in direct response to Trump's executive orders on Keystone XL and the Clean Power Plan.

"President Trump didn't issue an executive order today, he issued a declaration of war on American leadership on climate change and our clean energy future," said Markey.

Markey said Monday that he plans to introduce a slew of bills, including one to transition to 100 percent clean and renewable energy by 2050, another to reform the federal coal leasing program, and a third to "block export of Keystone XL oil and refined product," while opening up offshore wind energy on the nation's coasts.

Mother Jones
http://www.motherjones.com/environment/2017/03/trump-executive-order-climate
Trump Just Released His Plan to Gut Obama's Climate Policies. It's Worse Than You Thought.
By Rebecca Leber 3/27/17 11:00 PM

President Donald Trump will issue his long-promised executive order rolling back federal government efforts to fight climate change Tuesday.

The wide-ranging order, which will be accompanied by other environmental directives, targets Obama-era policies across the government, including in the Environmental Protection Agency, the Department of Interior, and the Department of Defense. It directs the EPA to revisit the Clean Power Plan, which limits carbon pollution from power plants and was considered the center-piece of former President Barack Obama's climate policy. Additionally, Trump is asking the Justice Department to stop defending the plan in court.

The president will instruct agencies to rescind a moratorium on coal leasing on public lands; rewrite limits on methane emissions from the oil and gas industry; and ignore the EPA's current calculation on the costs of carbon pollution. There are also broad directives reversing an Obama initiative requiring that federal departments consider climate mitigation strategy and the national security risks of global warming.

One of Trump's more notable "Day One" promises is missing, however: The United States will remain in the landmark Paris climate accord for the time being—despite Trump's pledge to "cancel" it.

Still, environmentalists are furious. "This is not just dangerous; it's embarrassing to us and our businesses on a global scale to be dismissing opportunities for new technologies, economic growth, and US leadership," Obama EPA Administrator Gina McCarthy said in a statement.

Sen. Edward Markey (D-Mass.) called Trump's actions "a declaration of war on American leadership on climate change and our clean energy future" in his own statement.

Indeed, Tuesday's actions are just the start of a long fight over the federal government's role in confronting climate change. Undoing the regulations already on the books, from the Clean Power Plan to the methane rule, could take several years. And Trump will face fierce resistance throughout the protracted fight. Green groups are already threatening legal action.

EPA Administrator Scott Pruitt, White House Press Secretary Sean Spicer, and Trump himself have all stuck to a similar script while previewing the order. They insist it will create jobs and help the United States achieve energy independence (although the US wasn't "energy independent" before the Obama rules existed). At a recent Kentucky rally, Trump claimed the executive order would "save our coal industry." (It won't.)

On a press call Monday night, a senior White House official also stuck to that script. That is, until reporters asked him whether administration staffers who worked on the order accepted the science behind global warming and sea level rise—and the research showing that climate change makes extreme weather worse.

"I would like to see" that research, said the official, who spoke on background to reporters. "Send it to me."

Asked whether the president and his staff all believe in manmade climate change, the official stumbled, "Um...again I think it's not a controversial statement. The key question is the extent over what frame of time." Asked whether the official personally believed climate change is manmade, he said, "Yeah, sure I do. That doesn't say much does it?"

It actually says a lot. Trump and Pruitt have both at times dismissed climate science—Trump infamously called it a Chinese hoax. Environmental lawyers think these pronouncements could strengthen their lawsuits. "It is possible that statements of that sort will come back to haunt them," Richard Revesz, a New York University environmental law professor, said. "It would suggest they prejudge the science before consulting with scientists. There is a pretty high burden for departing from an existing rule."

Here's the rundown of some of what Trump's executive actions will do:

Gutting the Clean Power Plan

The Clean Power Plan was the Obama EPA's strategy for reducing carbon pollution from existing power plants 32 percent by 2030. Under this rule, states would have to submit plans to achieve customized emissions targets using a mix of renewables, natural gas, and energy efficiency. The Supreme Court put the rule on hold last year as attempts to block it wind their way through the court system, so the EPA's work on the program has ground to a halt.

Trump's order directs the EPA to revise the plan and review what it thinks is required under the Clean Air Act, which forms the basis for the power plant regulations. The moves will require an extensive public notice and comment period to justify any changes, and the administration has yet to make a timetable public.

Trump is instructing the EPA to revise the rule (and weaken it substantially)—rather than rescind it entirely—presumably because the Supreme Court told the agency in 2007 it must regulate carbon pollution if it finds carbon to be a threat to human health. The agency issued this so-called "endangerment finding" in 2009, and it was upheld in a 2012 appeals court case. As long as the EPA's finding that climate change poses a health danger remains in effect, the EPA is legally required to issue regulations based on the "best available science." While revoking the endangerment finding has long been a goal of some on the right, it would be a difficult feat that would likely involve convincing the courts that climate change is, as Trump contends, a hoax.

Adding more complication still, the DC federal court of appeals has yet to issue its opinion on the legality of the Clean Power Plan, after hearing the case on an expedited schedule last fall. As expected, Trump is now asking the Department of Justice to withdraw its defense of the plan.

Ignoring the Cost of Carbon

In 2007, a federal appellate court ruled that when performing a cost-benefit analysis on its fuel efficiency standards, the Bush administration had to account for the costs that carbon emissions inflict on society by contributing global warming and other problems. The court recognized that "while the record shows that there is a range of values [for the social cost of carbon], the value of carbon emissions reduction is certainly not zero."

Of course, translating the impacts of carbon emissions and climate change into an economic "cost" that can be measured in dollars is a complicated undertaking. Obama's EPA ultimately worked out a formula for tabulating these costs and used it as a basis for its climate regulations.

Trump's order directs the EPA to ignore this calculation.

Ending the Moratorium on Coal Leases on Public land

In January 2016, Obama ordered a moratorium on new coal leases on public lands until Interior could update its badly outdated leasing program. Trump is now directing the department to reverse that moratorium. Unlike the Clean Power Plan, which was a formal rule that can only be undone through a drawn-out process, Interior can act on this directive immediately.

When that happens, environmental groups are ready to fight back. Earthjustice expects this to be the first in a long series of legal battles over Tuesday's order. The group says it plans to file a lawsuit within hours of the agency's action.

"We expect to challenge any action that allows coal leasing to resume before [an] environmental review is completed that evaluates whether the federal coal leasing program should be reformed (or scrapped altogether) in light of its significant climate impacts and failure to generate a fair return for US taxpayers," Earthjustice attorney Jenny Harbine said.

Rolling Back Methane Restrictions

The Obama administration finalized a series of regulations toward the end of his presidency limiting methane emissions. Among them was an Interior rule limiting excessive flaring and venting from oil and gas operations on public lands. Like the Clean Power Plan, this change will have to go through a formal rulemaking process in order for Trump to undo it. Trump will also rescind Obama's broad strategy, released in 2014, for reducing methane emissions.

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Message

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Sent: 4/18/2017 1:50:17 PM
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Subject: Morning Consult: Trump administration may not find middle ground on Paris Climate Deal, 4/18/17

Morning Consult
https://morningconsult.com/2017/04/17/trump-administration-may-not-find-middle-ground-paris-climate-deal/
Trump administration may not find middle ground on Paris Climate Deal
By Jack Fitzpatrick 4/17/17

As the Trump administration debates whether to stay in the Paris climate agreement, observers are skeptical that opposing wings of the administration will reach a middle ground.

President Donald Trump's top advisers are expected to meet Tuesday to discuss whether the U.S. should remain in the agreement, Politico reported. The White House did not confirm on Monday that the meeting would happen.

Trump has been critical of the Paris deal's potential effect on the U.S. economy, and told Reuters during last year's presidential campaign that he may "renegotiate" the deal. But it seems unlikely that the debate could lead to a compromise in which the U.S. stays in the Paris agreement while reducing its commitment to cut greenhouse gas emissions.

Michael McKenna, an energy lobbyist who led the Department of Energy's transition team, said the text of the deal does not allow countries to reduce their commitments, and anything but a full-fledged withdrawal would undermine Trump's focus on rolling back environmental regulations.

The agreement's text specifically allows a country to adjust its greenhouse gas targets if it is "enhancing its level of ambition," but not to reduce promises.

"There's no way to square this circle," said McKenna, who supports a full-fledged exit from the Paris agreement. "The president is going to have to decide, you're in or you're out."

Trump's efforts to roll back other environmental regulations, including the Clean Power Plan and auto-emissions standards, are "window dressing" if the administration maintains its promises under the Paris agreement, McKenna said in a phone interview on Monday.

Environmental Defense Fund Senior Attorney Alex Hanafi said he was less certain it's impossible for the U.S. to reduce its commitments, but either pulling out of the deal or weakening the U.S.'s commitments would provoke a negative global reaction.

"Either way, there will be blowback from the international community," Hanafi said. "And I think that's entirely appropriate because there is an expectation that when the U.S. or any other country makes a promise, they're going to stand by that promise."

Press Secretary Sean Spicer said in March that Trump would make a final decision on the deal by the May 26 Group of Seven conference in Italy. Environmental Protection Agency Administrator Scott Pruitt said last week on "Fox & Friends" that he would like the U.S. to "exit" the deal.

McKenna said a carbon tax seemed to be the only possible change to the U.S.'s commitments that would make them more ambitious and could also be construed as better for the economy. A group of former Republican officials proposed a carbon tax and dividend system in February, saying it would be more effective at cutting emissions and more predictable for businesses than the current patchwork of regulations.

That approach might be better than the current system but it's also politically risky to call for a tax, McKenna said.

"A carbon tax is a great answer if you never intend to run for office again," he said.

Some administration officials did not discard the international deal out of hand, with Secretary of State Rex Tillerson saying he thinks the U.S. should "maintain its seat at the table in the conversation on how to address threats of climate change. They do require a global response." But he did not specifically say what the U.S.'s promises should be.

Tillerson's comments seemed to support the idea of staying in the Paris agreement, but McKenna said the U.S. would continue meeting and negotiating with other countries regardless, as part of the United Nations Framework Convention on Climate Change.

A State Department spokesman did not respond to a request for comment clarifying Tillerson's position.

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Message

From: McGonagle, Kevin [mcgonagle.kevin@epa.gov]
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Subject: RE: Clean Power Plan Clips 3/27/17

Below: E&E News, USA Today, Huffington Post, Bloomberg, Washington Post, The Daily Caller, Reuters, E&E News (2), Politico, International Business Times, AP (3/26), Bloomberg (3/26), Washington Examiner (3/26), Washington Times (3/26)

E&E News
http://www.eenews.net/eenewspm/2017/03/27/stories/1060052144
Battle lines drawn as Trump plans first EPA trip
By Robin Bravender 3/27/17 4:10 PM

With President Trump slated to visit U.S. EPA tomorrow to announce plans to roll back Obama-era rules, the messaging war over Trump's policies is already in full swing.

Trump is expected to sign a long-anticipated executive order at EPA headquarters tomorrow that the administration says will promote energy independence. He's expected to instruct EPA boss Scott Pruitt to begin the process of repealing the Obama administration's Clean Power Plan — a rule to cut greenhouse gas emissions from power plants — and is expected to lay out additional environmental policies targeted for repeal.

"Tomorrow, the president will sign an executive order to strengthen the nation's energy security by reducing unnecessary regulatory obstacles that restrict the responsible use of domestic energy resources," White House spokesman Sean Spicer told reporters today. "This order will help keep energy and electricity affordable, reliable and clean in order to boost economic growth and job creation."

Trump's first visit to EPA — an agency he's targeted for severe budget cuts — is certain to ruffle many of the government workers there, many of whom are uncertain about their career prospects and the mission of the agency under the new administration.

Environmentalists and public health groups today voiced their opposition to the much-anticipated rule in advance of tomorrow's rollout.

"Donald Trump continues to sacrifice the health of millions of Americans to boost the profits of Big Oil," said Friends of the Earth President Erich Pica. "The administration's energy executive order will further our dependence on fossil fuels and will accelerate climate change."

Environmental Working Group President Ken Cook said today that Pruitt "lacks a fifth-grader's understanding of what's causing global warming." He added, "Instead of looking to improve Americans' lives, President Trump seems to measure success by how much damage he can inflict on policies that protect our health and environment. Shamefully, the brunt of the harm from this foolish retreat from science and reason will be borne by our children."

Others have been anxious to see the new administration follow through on Trump's promise to roll back the Clean Power Plan.

Scott Segal, an energy industry lobbyist at Bracewell LLP, said in a statement today, "It is possible to keep up international dialogue without the straitjacket of regulations that exceed legal authority. And it is possible to review existing policies in ways that remove impediments to safe, affordable and reliable domestic energy production. While we will review any final executive order, it appears that the executive order under discussion is a strong step in the right direction."

USA Today
http://www.usatoday.com/story/news/politics/2017/03/27/president-trumps-executive-order-undo-obamas-clean-power-plan-rule/99697594/
President Trump's executive order will undo Obama's Clean Power Plan rule
By Ledyard King 3/27/17 3:38 PM

WASHINGTON — President Trump is expected to sign an executive order Tuesday to roll back the Clean Power Plan rule, keeping a campaign vow to undo the Obama administration's aggressive attempts to reduce carbon emissions.

Trump frequently promised last year to undo the rule, which the Supreme Court blocked from implementation last year while legal challenges are heard.

He told friendly crowds in coal-producing states that lifting carbon restrictions would not only keep energy costs affordable but also help revitalize the coal industry and the communities economically ravaged by environmental regulations.

Trump has called climate change a "hoax" perpetrated by China to gain a competitive advantage. He's also said he wants to pull out of the Paris climate agreements, the international accord on global warming Obama embraced through his power plan rule.

The budget outline the White House issued earlier this month called for defunding the Clean Power Plan that Obama announced in 2015 which some two dozen states are suing to overturn.

Under Trump's America First Energy Plan, the budget "reorients EPA's air program to protect the air we breathe without unduly burdening the American economy."

On Sunday, EPA Administrator Scott Pruitt confirmed Trump would be signing the "energy independence" executive order Tuesday.

"For too long, over the last several years, we have accepted a narrative that if you're pro-growth, pro-jobs, you're anti-environment; if you're pro-environment, you're anti-jobs or anti-growth," Pruitt said Sunday on ABC's This Week with George Stephanopoulos. "We can be both pro-jobs and pro-environment. And the executive order will address the past administration's efforts to kill jobs across this country through the Clean Power Plan."

Before running the EPA, Pruitt was the attorney general of Oklahoma, one of the states suing the agency over the rule which would have affected about 1,000 fossil fuel fired power plants with about 3,100 units nationwide.

Trump's order would also signal further evidence that federal lawyers are unlikely to fight for the plan in court, leaving environmental groups and other organizations to wage its legal defense by themselves.

"Rolling back the Clean Power Plan on the heels of the three hottest years on record is beyond disgraceful," said Tiernan Sittenfeld, senior vice president of Government Affairs for the League of Conservation Voters. "We will fight this attack on clean energy jobs and public health at every step."

The rule took effect in 2015, but was stayed by the Supreme Court in February of 2016 pending the outcome of the legal challenge.

It was aimed squarely at coal-fired power plants, requires existing power plants to cut harmful emissions compared to 2005 levels. By 2030, the reduction would be 32% for carbon, 90% for sulfur dioxide, and 72% for nitrogen oxides.

According to the EPA's Web site, the Clean Power Plan seeks to cut "significant amounts of power plant carbon pollution and the pollutants that cause the soot and smog that harm health, while advancing clean energy innovation, development and deployment, and laying the foundation for the long-term strategy needed to tackle the threat of climate change."

The agency also touts the rules as key to protecting public health "because carbon pollution comes packaged with other dangerous air pollutants." Having the rule in place, it says, would prevent 3,600 premature deaths, 1,700 heart attacks, 90,000 asthma attacks and 300,000 missed work days and school days each year.

Obama officials depicted the rule as one that gives states and utilities "ample flexibility and the time needed to achieve these pollution cuts ... while expanding the capacity for zero- and low-emitting power sources."

Opponents do not see it that way.

States are suing because they contend Washington does not have the authority to enact such a sweeping measure that they said would lead to higher electricity costs and reduced reliability of the nation's power grid.

New Jersey Commissioner of Environmental Protection Bob Martin called the rule "unprecedented regulatory overreach" shortly after it was unveiled. In a letter to the agency, he called it "uncommonly cumbersome, difficult and costly to implement, could undermine reliability, and would yield insufficient results."

Huffington Post
http://www.huffingtonpost.com/entry/trump-executive-order-climate-change_us_58b07ebae4b060480e079dc2
Donald Trump Is About To Undo Obama's Legacy On Climate Change
By Alexander C Kaufman 3/27/17 1:41 PM

President Donald Trump plans to sign an executive order on Tuesday rolling back Obama-era policies to curb planet-warming greenhouse gas emissions, Environmental Protection Agency Administrator Scott Pruitt said Sunday.

In an interview on ABC's "This Week," Pruitt said the order will be called the "Energy Independence Executive Order." It is expected to undo former President Barack Obama's signature program to deal with climate change, the Clean Power Plan, which limited greenhouse gas emissions from power plants.

"We have made tremendous progress on our environment. We can be both pro-jobs and pro-environment," Pruitt said. "The executive order will address the past administration's effort to kill jobs throughout the country through the Clean Power Plan."

The executive order will likely take other measures to protect the coal industry, such as instructing the Department of the Interior to lift a temporary ban on coal leasing on federal lands that the Obama administration put in place last year. The order is also expected to scrap federal guidances instructing agencies to factor climate change into policymaking, and to disband a team tasked with calculating the "social cost of carbon."

Undoing The Clean Power Plan

Trump's executive order will likely kneecap the federal government's most important policy for reducing carbon emissions. Doing so would also hamper U.S. efforts to meet the commitments made more than a year ago in the 195-country Paris Agreement — the first global climate deal to include the U.S. and China, the world's biggest polluters.

The long-expected order would give teeth to Trump's America First Energy Plan, a vague policy outline he issued after his inauguration to eliminate Obama's Climate Action Plan.

Obama's plan, launched in 2013, set a strategy for combating climate change by cutting greenhouse gas emissions from power plants. The utility sector accounts for the greatest portion of the U.S. carbon footprint, producing 30 percent of all emissions, according to 2014 data from the EPA. That's largely because coal, by far the dirtiest-burning fossil fuel, has long served as the country's primary source of electricity.

The core of Obama's initiative was the Clean Power Plan, a sweeping EPA rule that aimed to reduce carbon emissions from existing power plants by 32 percent below 2005 levels. The policy set new standards for new natural gas-burning power plants, and put stricter limits on coal-fired, steam-based plants. By implementing the plan, the U.S. hoped meet its emissions reduction goals as part of the 2015 Paris climate agreement. (The failure of previous global deals, such as the 1992 Kyoto Protocol, hinged partly on the United States' refusal to implement emission cuts.)

The president's elder daughter, Ivanka Trump, and her husband, White House senior adviser Jared Kushner, convinced the president to remove language from his new order that was critical of the Paris accord, according to The Wall Street Journal. It's unclear how the U.S. can meet its commitments without the Clean Power Plan in place.

Last year, a coalition of Republican-controlled states — led by Pruitt, who was then Oklahoma's attorney general — filed a lawsuit to stop the emissions rules, prompting the Supreme Court to grant a stay suspending implementation. Pruitt launched at least 13 lawsuits against the EPA before he became the agency's administrator last month.

Repealing those rules could prove expensive and deadly, costing the U.S. economy up to $600 billion by removing critical incentives to increase energy efficiency, according to the research firm Energy Innovation. The CCP's repeal could lead to billions of tons of carbon being released into the atmosphere, which in turn could contribute to more than 120,000 premature deaths, according to a writeup of the study in Forbes.

Still, another Supreme Court decision may hinder the Trump administration's efforts to completely scrap the plan. In 2007's Massachusetts v. EPA, the court ruled that greenhouse gas emissions constituted pollution, requiring the EPA to take action. Plus, courts work both ways: Environmental groups are widely expected to sue over attempts to stop cutting emissions.

"In order to make policy change, it's going to need to be supported by the science, and that's where I think ultimately the effort is going to founder," Pete Fontaine, a veteran environmental lawyer who worked at the EPA, told The

Huffington Post. "Yes, you can cut programs and you can go about it with your fiscal authority to try to change policy, but in order to modify regulations, you have to be able to withstand an arbitrary-and-capricious standard."

Such standards, which can be used to overturn previous court rulings, would need to stand the test of climate science, Fontaine said.

"Facts will not be changed by people expressing beliefs in an alternative set of facts," he said. "The science is well settled on climate change, and that science is based on literally more than a century of scientific inquiry and the laws of physics, which are going to govern here no matter what people say is contrary to their beliefs."

Yet a battle appears to be brewing in the Trump administration over the future of the endangerment clause, policy that spawned from the Supreme Court's ruling categorizing carbon dioxide and methane emissions as a public health threat. David Schnare, an appointee from the EPA transition team, quit suddenly earlier this month in part because Pruitt refused to take on the clause, Politico reported.

"The backstory to my resignation is extremely complex," Schnare told E&E News, an energy and environment news wire. "I will be writing about it myself. It is a story not about me, but about a much more interesting set of events involving misuse of federal funds, failure to honor oaths of office, and a lack of loyalty to the president."

King Coal's Decree

By lifting the temporary moratorium on coal leasing, the Trump administration is ending a policy aimed at lessening the environmental impact of mining and increasing the government's yield on investment.

The current rules grant coal companies the right to apply to schedule leases at times favorable to them, as well as to design the tracts and control the terms on which they're offered. Critics say the standards are lopsided, giving coal producers above-market-value cuts of revenue generated from mining.

The government levies an 8 percent cut of revenue from underground mining and takes 12.5 percent from surface mining, which includes environmentally destructive techniques such as mountaintop removal and open pit mining. That money is split between the federal government and the state where the coal is mined.

But Dan Bucks, former director of revenue for the state of Montana, a major coal producer, said the leasing program is "essentially broken," with more than 90 percent of leases awarded without real competition.

"Lease payments, for those of us who have examined from outside can determine, have failed the market value standard test," he said. "The American people have been shortchanged on the leasing side as well as the royalty side."

"The Obama administration wanted to fix that," added Bucks, who is not aligned with either Democrats or Republicans. "They wanted to update the leasing program so public issues, namely environmental issues and climate change, could be taken into account before leases were offered."

Trump vowed to resuscitate the coal business by axing environmental rules that he and the industry blame for years of decline and thousands of layoffs. Those promises won him big victories in coal country. But shrinking market demand has actually played a bigger role in coal's decline.

Cheaper, cleaner-burning natural gas has devoured coal's share of the electricity market over the past decade. In response, coal companies have bet big on continued demand from China. But Chinese demand peaked in 2012, and has

since plummeted due to the country's slowing economy and a move to suspend the construction of coal-fired power plants in favor of renewable energy.

A War On Environmental Protections

Trump has put numerous other environmental regulations on the chopping block since his inauguration. He and many Republican lawmakers argue that these rules created unnecessary and at times pricey hurdles for corporations and small businesses.

Last week, the White House proposed slashing the EPA's budget by nearly one-third, a move that would eliminate popular programs like Energy Star and environmental justice initiatives, and would cripple the agency's enforcement division. The EPA scrapped a rule earlier this month requiring oil and gas drillers to report leaks of methane, a greenhouse gas 40 times more potent than carbon dioxide.

Last month, after House Republicans voted to overturn a rule protecting waterways from coal mining pollution, Trump signed an order instructing the EPA and Army Corps of Engineers to overhaul the 2015 Waters of the United States rule, which expanded federal control over wetlands and other waterways by 3 percent. The rule essentially provided guidelines on whether anti-pollution laws would apply if, for example, a farmer dams a stream to make a pond for livestock or a developer fills in a marsh to build a new house.

But in the view of the country's top environmental policymaker, the pendulum swung too far in the direction of environmentalists under the previous administration, and course correction is needed.

"We need a pro-growth and pro-environment approach for how we do regulations in this country," Pruitt said on Sunday. "For too long, we have accepted a narrative that if you're pro-growth, pro-jobs, you're anti-environment."

Bloomberg
https://www.bloomberg.com/politics/articles/2017-03-26/trump-said-to-issue-far-reaching-reversal-of-obama-climate-push
Trump to Issue Far-Reaching Reversal of Obama Climate Push
By Jennifer A Dlouhy 3/27/17 9:39 AM

President Donald Trump is set to sign a sweeping executive order on Tuesday aimed at promoting domestic oil, coal and natural gas by reversing much of his predecessor's efforts to address climate change -- prompting warnings the action will undermine U.S. leadership on the issue.

The document lays out a broad blueprint for the Trump administration to dismantle the architecture that former President Barack Obama built to combat the phenomenon, according to details shared with Bloomberg News. Some of the changes would happen immediately, while others would take years to complete.

"He's trying to undo more than a decade of progress in fighting climate change and protecting public health," David Doniger, director of the climate and clean air program at the Natural Resources Defense Council, said in an email. "But nobody voted to abandon America's leadership in climate action and the clean-energy revolution. This radical retreat will meet a great wall of opposition."

The order will compel federal agencies to quickly identify any actions that could burden the production or use of domestic energy resources, including nuclear power, and then work to suspend, revise or rescind the policies unless they are legally mandated, are necessary for the public interest or promote development.

Pro-Growth

It also will toss out two Obama-era directives that gave consideration of climate change a prominent role in federal rule making. One advised government agencies to factor climate change into environmental reviews, such as those governing where oil drilling should take place. The other, called the "social cost of carbon," is a metric reflecting the potential economic damage from climate change that was used by the Obama administration to justify a suite of regulations.

"This is about making sure that we have a pro-growth and pro-environment approach to how we do regulation in this country," Scott Pruitt, the head of the Environmental Protection Agency, said on ABC's "This Week" program on Sunday.

Trump, who has called climate change a hoax, has vowed to reorient the government so that U.S. oil and coal producers thrive and steel and auto manufacturers don't face "job-killing restrictions." The coming order underscores Trump's commitment to make good on his campaign promises, which helped propel him to victory in industrial strongholds such as West Virginia and Pennsylvania.

The details shared with Bloomberg News reflected the latest draft of the White House order and could change before the announcement, which Pruitt said would happen Tuesday.

Coal Jobs

Some analysts question whether reversing the rules can save coal miner jobs. Killing the Clean Power Plan is not enough to spark a coal revival and avert a wave of planned retirements of power plants using the fossil fuel, said Kevin Book, an analyst with Washington-based research firm ClearView Energy.

"Even without the Clean Power Plan, there are still 14 gigawatts of coal retirements related to" a mercury pollution rule "and market dynamics waiting in the wings," Book said.

While the White House order will make clear that the target of the planned regulatory rollback should be on policies curbing the production of oil, natural gas, coal and nuclear energy, it also will say the U.S. is well served when affordable, reliable and clean electricity is produced from an array of sources, including solar, wind and hydropower.

The order also is set to include a targeted assault on a handful of specific Obama-era regulations. It will require the Interior Department to lift a moratorium on the sale of new coal leases on federal land and compel the EPA to review, and, "if appropriate," begin proceedings to suspend, revise or rescind regulations designed to reduce greenhouse gas emissions from power plants.

Clean Power Plan

Obama's Clean Power Plan was designed to cut carbon dioxide emissions from electricity by 32 percent by 2030 compared to 2005 levels. The initiative has been in legal limbo since the Supreme Court stayed it while it was reviewed by a federal appeals court. The Trump administration now is expected ask that court to put the matter on hold to allow it time to revise or undo the measure -- an action environmentalists have vowed to challenge.

Other policies in the cross hairs: an EPA rule setting requirements for greenhouse gas emissions for construction of new power plants and an Interior Department regulation setting mandates on hydraulic fracturing of oil and gas wells on federal lands. The Interior Department's Bureau of Land Management said earlier this month it would begin the process to rescind the regulation, which requires companies to disclose the chemicals they pump underground and to seal off waste water in storage tanks.

Revoking Directives

Trump's executive order also is set to revoke six specific directives from his predecessor, including Obama's broad strategy for paring emissions of methane released from oil and gas operations. Other Obama directives targeted for repeal include one on climate change and national security, as well as a pair of directives from June 2013 that laid out his climate plans.

The Obama administration wove climate considerations into decisions across the federal bureaucracy, from efficiency standards for microwave ovens to the refurbishing of government buildings.

The changes may have little immediate impact on the market for coal, which is facing stiff competition from cheaper natural gas and renewable energy, analysts say.

Even before the Obama administration imposed the coal-leasing moratorium in January 2016, producers had little interest in adding new federal reserves to their portfolios amid slumping domestic demand. The U.S. government has sold just one coal leases since October 2012, though earlier this month it approved a transaction originally sought in 2005. Existing federal leases contain at least 20 years' worth of coal, according to Interior Department estimates.

Coal's Decline

Even without the EPA's Clean Power Plan in force because of the Supreme Court stay, using coal to generate electricity has been in decline as a result of previous pollution regulations and competition from low-cost natural gas, solar and wind.

The removal of the Clean Power Plan could halt coal's decline as a source of electricity during the next two decades, according to projections from the Energy Information Administration. More coal use would mean less natural gas use, EIA said.

Trump's action sets in motion at least a year of bureaucratic work at the EPA to formally dismantle the Clean Power Plan. And whatever happens will inevitably be challenged in court by those same environmental groups.

By contrast, the Interior Department can undo the coal leasing moratorium with the stroke of a pen, the same way it was imposed a year ago, under an administrative order issued by former Interior Secretary Sally Jewell.

Trump's targets would also reduce the role of climate change in government decision-making. For instance, the social cost of carbon metric served as the linchpin for many Obama administration environmental rules. Critics say the number -- now nearly $40 for every metric ton of carbon dioxide emitted into the atmosphere -- gives artificial precision to uncertain conditions nearly 300 years in the future.

According to shared details of the executive order, the Trump administration will disband the working group that created the social cost of carbon and return to an earlier 2003 approach for calculating the costs and benefits of proposed regulations.

Washington Post
https://www.washingtonpost.com/news/energy-environment/wp/2017/03/27/heres-how-trump-will-try-to-eviscerate-obamas-climate-policies-on-tuesday/?utm_term=.03880e9366e6
Here's how Trump will try to eviscerate Obama's climate policies on Tuesday
By Juliet Eilperin 3/27/17 11:17 AM

President Barack Obama tried to integrate climate change into every facet of federal decision-making; President Trump aims to pull it out by its roots. Environmental Protection Agency Administrator Scott Pruitt said Sunday on ABC's "This Week" that an executive order the president will sign Tuesday "will address the past administration's effort to kill jobs throughout the country through the Clean Power Plan," a reference to a regulation limiting greenhouse gases emitted by electric utilities. But it does much more than that: Here's a snapshot of what's in, and out, of the directive, based on the latest draft.

WHAT'S IN IT:

1. Instructions to EPA to rewrite regulations restricting carbon emissions from both new and existing power plants. These rules — particularly the one affecting existing plants, many of which are coal-fired — lie at the center of Obama's effort to curb the nation's carbon output. The limits on existing facilities aim to cut carbon pollution by about one-third by 2030, compared with 2005 levels, and the rule is subject to a pending lawsuit before the U.S. Court of Appeals for the D.C. Circuit. The order would instruct Attorney General Jeff Sessions to ask the D.C. Circuit to hold the lawsuit in abeyance while EPA revises the rules, a process that will take more than a year and will inevitably face a court challenge of its own.

2. Lift a moratorium on federal coal leasing. Trump will direct the Interior Department's Bureau of Land Management to lift the freeze on coal leasing on its land, which has been in effect since December 2015. In January, Interior proposed that the program guiding coal exploration and production across 570 million publicly owned acres be updated to factor in the climate effect of such activities and provide a bigger return for U.S. taxpayers. This will not have a major impact on domestic coal production, since the government has sold one set of coal leases since October 2012, and has estimated that it has already granted leases that are equivalent to a 20-year supply of coal. But Pruitt told ABC that this and other policies in the order constitute "a promise to the American people — saying we can put people back to work and be pro-environment as well."

3. Abolish federal guidance instructing agencies to incorporate climate change into federal decision-making. Obama ordered agencies to include climate change as a consideration when they conducted reviews under the National Environmental Policy Act, a sweeping law that informed any federal decision that had a significant environmental impact. This will be eliminated outright.

4. Jettison the Obama administration's "social cost of carbon." The order would dissolve the task force that calculated what has become known as "the social cost of carbon" and revert to the 2003 standard used under the George W. Bush administration. The current calculus, which is set at $36 per ton of carbon dioxide, aims to capture the negative consequences of allowing greenhouse gas emissions to continue to rise and is applied to any regulations that have a climate impact.

5. Promote oil and gas development on Interior's lands, including national wildlife refuges. The order would make it easier to flare methane on oil and gas operations on federal land. In November the previous administration issued a rule curbing such "fugitive" emissions of the potent greenhouse gas, which the House has voted to overturn. The order would also make it easier to conduct energy exploration on land managed by the U.S. Fish and Wildlife Service.

WHAT'S NOT IN IT:

Language on the Paris climate agreement. The president's top advisers have been divided over whether America should formally withdraw from the 2015 global warming pact that Obama and his deputies helped broker through the U.N. Framework Convention on Climate Change. Under that accord, which has already entered into force, the United States voluntarily committed to reduce greenhouse gas emissions by 26 to 28 percent below 2005 levels in 2025, while making "best efforts" to reduce those emissions by 28 percent. In his Sunday interview, Pruitt suggested that whether the United States opts out or remains in the agreement is unrelated to Tuesday's executive action. "The Paris accord is

nonbinding. It was not a treaty, as such. The Clean Power Plan is not tethered to the Paris accords," he said. "This is an effort to undo the unlawful approach the previous administration engaged in and do it right going forward with the mind set of being pro-growth and pro-environment."

The EPA administrator made it clear he's not a fan of the pact. "What was wrong with Paris was not just that it failed to be treated as a treaty, but China and India got away scot-free. They didn't have to take steps until 2030," he said. "We penalized ourselves through lost jobs while China and India didn't take steps to address the issue internationally. Paris was just a bad deal, in my estimation."

The Daily Caller
http://dailycaller.com/2017/03/27/trump-readies-energy-independence-order-to-repeal-obama-climate-policies/
Trump Readies 'Energy Independence' Order To Repeal Obama Climate Policies
By Michael Bastasch 3/27/17 9:33 AM

President Donald Trump will issue a sweeping "energy independence" executive order Tuesday to dismantle signature global warming policies put in place by the Obama administration.

Environmental Protection Agency (EPA) Administrator Scott Pruitt told ABC News Trump would issue the order tomorrow to make "sure that we have a pro-growth and pro-environment approach to how we do regulation in this country."

"The executive order is going to address the past administration's effort to kill jobs across this country through the Clean Power Plan," Pruitt told ABC's George Stephanopoulos of the "energy independence" executive order on Sunday.

Trump promised to eliminate "job-killing" energy regulations during his campaign, specifically rolling back an EPA regulation limiting greenhouse gas emissions on power plants — the Clean Power Plan (CPP).

The upcoming order goes even farther than axing the CPP, according to Bloomberg's Jennifer Dlouhy, who got a sneak peek at Tuesday's order. Here's what it does:

Orders EPA to review and "if appropriate" work to repeal or revise the CPP.

Rescinds the Interior Department's moratorium on new coal mining leases on federal lands.

Repeals an Obama-era guidance on how federal agencies should take global warming into account when doing National Environmental Policy Act (NEPA) permitting reviews.

Disbands a federal working group that developed the "social cost of carbon" (SCC) estimate used to justify onerous global warming regulations. The SCC will also be thrown out.

Dlouhy reports Trump's order revokes "six specific directives from his predecessor, including Obama's broad strategy for paring emissions of methane released from oil and gas operations."

Trump will also rescind "Obama directives targeted for repeal include one on climate change and national security, as well as a pair of directives from June 2013 that laid out his climate plans," Dlouhy reported.

While most of Trump's order can immediately take effect, repealing the CPP will have to go through a lengthy process that could take months or years.

Environmentalists have also vowed to sue the Trump administration to defend the CPP. They'll likely be joined by Democratic state attorneys general.

Reuters
http://www.reuters.com/article/us-usa-energy-regulation-idUSKBN16X150
Trump to sign order on Tuesday easing energy regulations: officials
By Steve Holland and Jason Lange 3/27/17 7:09 AM

President Donald Trump will sign an order on Tuesday aimed at making it easier for companies to produce energy in the United States, administration officials said on Sunday.

Under Trump, the U.S. Environmental Protection Agency is aiming to aggressively roll back Obama-era environmental regulations.

Trump plans to sign the executive order at the EPA to reduce "unnecessary regulatory obstacles that restrict the responsible use of domestic energy resources," a White House official said.

EPA Administrator Scott Pruitt told ABC's "This Week" the order would help reverse the Obama administration's anti-fossil fuel strategy.

Pruitt has publicly doubted the scientific consensus that human actions are the lead cause of climate change. His installation at the EPA last month reinforced the view on both sides of the political divide that America is ceding its position as a leader in the global fight on climate change.

E&E News
http://www.eenews.net/energywire/2017/03/27/stories/1060052110
Trump to roll back Clean Power Plan tomorrow at EPA
By Niina Heikkinen 3/27/17

The White House will release its executive order on the Clean Power Plan tomorrow, triggering President Trump's promises to dismantle the climate policies of his predecessor.

U.S. EPA Administrator Scott Pruitt announced the timing yesterday on ABC's "This Week." The move comes as the White House seeks safe footing after its stunning legislative loss on health care Friday.

The twin announcements about signing the executive order and permitting the Keystone XL pipeline, made before the weekend, stand to ease the turbulence of last week by fulfilling two of Trump's oaths to rural constituents.

"We've made tremendous progress on our environment, and we can be both pro-jobs and pro-environment, and the executive order's going to address the [past] administration's effort to kill jobs across the country through the Clean Power Plan," Pruitt said.

Vice President Mike Pence set the stage Saturday by telling a crowd in West Virginia, "The war on coal is over."

His remarks sought to reorient the White House toward an issue that served Trump well on the campaign trail, where he at one point wore a coal miner's hard hat and exulted in the devotion of workers in reflective stripes and coveralls.

"We're going to bring back jobs," Pence said. "We're going to get Washington out of the way of energy producers and coal miners — because energy means growth for America, and President Trump digs coal."

Still hurdles ahead before repeal

The White House confirmed yesterday that Trump will visit EPA, an agency for which he expressed disdain before the election, to formally announce the order with Pruitt at his side.

"On Tuesday, President Trump will sign an Energy Independence Executive Order at the EPA to strengthen the nation's energy security by reducing unnecessary regulatory obstacles that restrict the responsible use of domestic energy resources," White House spokeswoman Kelly Love said in a statement.

"This order will help keep energy and electricity affordable, reliable, and clean in order to boost economic growth and job creation," she said.

Sources have told E&E News that the order would begin the long process of unwinding the Clean Power Plan by requiring Pruitt to review the program, which cuts carbon emissions from existing power plants 32 percent by 2030. It also orders the Department of Justice to ask the U.S. Court of Appeals for the District of Columbia Circuit to abruptly freeze the legal challenge against the Clean Power Plan, effectively ending the government's defense of the carbon program.

The order is also expected to cancel the Climate Action Plan, while instructing federal agencies to review actions that restrict energy production (*Climatewire*, Feb. 21).

The order itself does not have legal force to repeal the Clean Power Plan, but it does send a signal to EPA to begin the process of rulemaking and public comment necessary to rescind it. The administration would then have to prove that the repeal was evidence-based and not arbitrary, said Steve Silverman, a former EPA attorney in the Office of General Counsel.

"The most immediate practical effect would be on pending litigation," he said, referring to challenges to the Clean Power Plan in the U.S. Court of Appeals for the District of Columbia Circuit (*Climatewire*, March 9).

"What they would ask the court to do is to put the litigation on ice while the administration takes action," said Silverman.

While the court doesn't have to agree, it likely will side with the administration on pausing the litigation, he said.

'States can make a difference,' but how much?

Agency efforts to terminate the Clean Power Plan could also be hindered if Congress follows through with Trump's proposed 31 percent cut to EPA's budget.

"If EPA is going to continue budget cuts, they aren't going to be able to do a new rulemaking process," said Kenneth Gillingham, an assistant economics professor at Yale University and a former senior economist on the White House Council of Economic Advisers under President Obama.

The "bare minimum" the administration could do to address the Clean Power Plan would be to simply repeal it, without replacing the climate rule with something else. In this case, the administration could take away funding for Clean Power Plan implementation in states but would still have to have funds to address court challenges to the rule's repeal, he said.

Taking away the Clean Power Plan would put the initiative back in the hands of states that want to address climate change, Gillingham added.

"States can make a difference, but not the kind of difference the federal government can make," he said.

The executive order has been expected for several weeks, since Pruitt first took the helm at EPA. Last week, White House spokesman Sean Spicer denied that it had been delayed and declined to comment on any details it might include (*E&E News PM*, March 22).

While environmental groups have challenged a repeal as an assault on climate action, Pruitt told "This Week" host George Stephanopoulos that the executive order would help bring back coal and manufacturing jobs to the United States and would also help the country reduce the need for energy sources from abroad.

Pruitt added that technological innovations in the coal and natural gas sectors were largely responsible for recent reductions in the United States' CO2 emissions. He cited horizontal drilling for extracting natural gas as an example but did not cite any coal-related technologies.

Pruitt: Paris was a 'bad deal'

Government studies have shown that canceling the Clean Power Plan would have minimal benefits to mining jobs in some regions. Meanwhile, natural gas production in the United States has surged following advances in hydraulic fracturing. Power companies have lowered their carbon footprints by switching away from coal and toward natural gas and renewable power. Technologies to cut carbon output for coal plants, however, are not widely in use.

Pruitt called the Obama administration "anti-fossil fuel" and said rolling back the Clean Power Plan would help to reduce electricity rates for consumers.

When questioned whether the move would affect the United States' ability to meet its commitments under the Paris Agreement, Pruitt said the Clean Power Plan was not "tethered" to the accords. He called the 2015 negotiations on climate change a "bad deal" since major polluters China and India do not have to take steps to reduce pollution until 2030. Instead, he said the United States should act within the framework of the Clean Air Act.

The EPA administrator did not answer repeated questions from Stephanopoulos on whether he would continue to allow California to maintain its waiver under the Clean Air Act to enact stricter fuel efficiency standards on automobiles than the rest of the country. Pruitt said the president would re-evaluate the corporate average fuel economy (CAFE) standards in 2018. He said that the public did not want to buy the cars that meet the higher efficiency standards and that continuing to manufacture them is "counter-helpful" to the environment.

"What this CAFE standards combined with the Clean Power Plan and the executive order sends a message to the American people that we're going to do what we can to make sure we produce jobs and growth while also being sensitive to the environment, and making sure that we introduce common sense back into the discussion," he said.

E&E News
http://www.eenews.net/eedaily/2017/03/27/stories/1060052095
Pruitt promises Clean Power Plan rollback tomorrow
By Kevin Bogardus 3/27/17

U.S. EPA Administrator Scott Pruitt said that President Trump tomorrow will sign his long-anticipated executive order rolling back environmental regulations.

Appearing on ABC's "This Week" yesterday, Pruitt said the "energy independence" executive order will come out tomorrow, ensuring the Trump administration has "a pro-growth and pro-environment approach to how we do regulation in this country."

Pruitt said the order will address the Clean Power Plan, which requires power plants to reduce their carbon emissions and has been subject to a stay issued by the Supreme Court. The EPA chief said the regulation drafted by the Obama administration was "unlawful" and that after Trump's executive order, the agency will act "within the framework of the Clean Air Act."

"And it will be legal," Pruitt added.

The order is expected to include several other energy-policy-related initiatives. Many thought the measure would be issued soon after Pruitt's Senate confirmation last month, but it was delayed for weeks.

On yesterday's show, Pruitt was pressed on whether the order rolling back the Clean Power Plan would bring back industry jobs, as Trump has repeatedly promised. The EPA administrator said it would.

"I think absolutely it will. It will bring back manufacturing jobs across the country, coal jobs across the country," Pruitt said, adding, "The last administration had an idea of keeping it in the ground. We need to [be] more independent, less reliant upon foreign energy sources. And this is an opportunity."

Trump has long courted the coal industry. The president and others in his administration have said he would roll back federal rules to help boost the energy sector.

"We're going to get Washington out of the way of energy producers and coal miners — because energy means growth for America, and President Trump digs coal," Vice President Mike Pence said in an appearance in West Virginia on Saturday.

Trump has targeted several regulations at EPA, including ordering the withdrawal of the Waters of the U.S. rule as well as reopening a review of the agency's vehicle emissions standards.

Yesterday, Pruitt was also asked how the United States could reach its carbon reduction targets under the 2015 Paris Agreement if EPA backed down on the Clean Power Plan.

Saying Paris was nonbinding as well as "a bad deal," the EPA chief said the power plant rule was not tied to the climate change deal.

"The Clean Power Plan is not tethered to the Paris accords. And so this is an effort to undo the unlawful approach the previous administration engaged in and to do it right going forward with the mindset of being pro-growth and pro-environment, and we can achieve both," Pruitt said.

Politico
https://www.politicopro.com/tipsheets/morning-energy/2017/03/pruitt-says-executive-order-coming-tuesday-022034
Pruitt says executive order coming Tuesday
By Anthony Adragna 3/27/17 5:46 AM

IT'S COMING! After weeks of repeated delays, President Donald Trump is expected to sign the "energy independence" executive order directing his administration to undo a host of Obama-era environmental actions on Tuesday, according to EPA Administrator Scott Pruitt. "This is an effort to undo the unlawful approach the previous administration engaged in, and to do it right going forward with the mindset of being pro-growth and pro-environment," Pruitt told ABC's "This Week" Sunday. "And we can achieve both." As your ME host reports, Pruitt said the action would "absolutely" help bring back coal industry jobs as the Trump administration pursues a "long term" strategy to reinvigorate the domestic fossil fuel industry. Pros were first to know about the Tuesday signing last week. But first, The Washington Post reports Trump will today announce a new White House office led by son-in-law and senior adviser Jared Kushner with sweeping authority to overhaul the federal bureaucracy by harvesting ideas from the business world.

Clean Plan rewrite will be tough: Career federal managers keep the wheels of government turning while awaiting a political appointee to take over. But those people have careers that span administrations, and they do not typically make tough political calls. "There are dozens and dozens of important issues that will be involved in that rulemaking," said Jeff Holmstead, who ran the Office of Air and Radiation for Bush, the office that would be tasked with the Clean Power Plan rewrite. "Those will be important legal issues. Someone who is acting, a career official is not going to be able

to make those decisions. Either they will have to take them up to the administrator, or they will need someone who is political head of the office who can make all those important decisions."

International Business Times
http://www.ibtimes.co.uk/epa-chief-trump-executive-order-will-roll-back-job-killing-climate-protection-legislation-1613793
EPA chief: Trump executive order will roll back 'job-killing' climate protection legislation
By James Tennent 3/27/17

The head of the US Environmental Protection Agency (EPA) has said that Donald Trump will signal the dismantling of legislation designed to fight global warming with the signing of an executive order on Tuesday.

Scott Pruitt, whose appointment to the EPA in February caused controversy because of his own climate change sceptic credentials, told ABC's This Week that the Energy Independence Executive Order was "about making sure we have a pro-growth and pro-environment approach to how we do regulation in this country".

"For too long, over the last several years, we've accepted a narrative that if you're pro-growth, pro-jobs, you're anti-environment. We can be both pro-jobs and pro-environment and the executive order is going to address the past administration's effort to kill jobs across this country through the Clean Power Plan."

The Clean Power Plan was a set of rules introduced under the Obama administration that would have seen states pushed to reduce CO2 emissions but which was held up by legal challenges.

The plan is expected to be scrapped under Trump. Defunding was suggested in the 2018 budget proposals.

Trump campaigned on a platform that Obama-era environmental regulation had led to job losses, particularly in coalmining areas. Critics argued that waning demand and automation were much bigger factors in companies cutting back on jobs.

In Kentucky last weekend, Trump continued his rhetoric, telling a rally of supporters that the EPA was going to be changed "from a job-killer into a job-creator".

Pruitt said that the Paris Agreement to combat climate change, which the US signed up to, was "non-binding".

"What was wrong with Paris," Pruitt said, "was not just that it failed to be treated as a treaty but [that] China and India, the largest producers of CO2 internationally, got away scot-free. They didn't have to take steps until 2030. Paris was just a bad deal."

Pruitt came under fire earlier in March when he appeared to say that CO2 emissions were not "a primary contributor" to global warming, going against the belief of his own agency and the majority scientific consensus.

AP

http://hosted.ap.org/dynamic/stories/U/US_TRUMP_CLIMATE?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT

EPA chief: Trump to undo Obama plan to curb global warming

3/26/17 2:02 PM

WASHINGTON (AP) -- President Donald Trump in the coming days will sign a new executive order that unravels his predecessor's sweeping plan to curb global warming, the head of the Environmental Protection Agency said Sunday.

EPA chief Scott Pruitt said the executive order to be signed Tuesday will undo the Obama administration's Clean Power Plan, an environmental regulation that restricts greenhouse gas emissions at coal-fired power plants. The 2015 rule has been on hold since last year while a federal appeals court considers a challenge by coal-friendly Republican-led states and more than 100 companies.

Speaking on ABC's "This Week," Pruitt said Trump's intention is to bring back coal-mining jobs and reduce the cost of electricity.

Supporters of former President Barack Obama's plan, including some Democratic-led states and environmental groups, argue it would spur thousands of clean-energy jobs and help the U.S. meet ambitious goals to reduce carbon pollution set by an international agreement reached in Paris in late 2015.

Pruitt on Sunday called the Paris climate accord a "bad deal" because he said it went too easy on China and India, who like the U.S. are among the world's leading producers of carbon dioxide.

"So we've penalized ourselves through lost jobs while China and India didn't take steps to address the issue internationally. So Paris was just a bad deal, in my estimation," he said.

Bloomberg

https://www.bloomberg.com/news/articles/2017-03-26/trump-to-begin-reversing-obama-era-cutbacks-in-carbon-dioxide

Trump to Begin Reversing Obama-Era Cutbacks in Carbon Dioxide

By Jennifer A Dlouhy 3/26/17 11:14 AM

The Trump administration will issue an executive order on Tuesday that begins dismantling a rule under former President Barack Obama that slashed carbon dioxide emissions and discouraged coal-fired electricity, U.S. environmental chief Scott Pruitt said.

"The executive order is going to address the past administration's effort to kill jobs across this country through the Clean Power Plan," Pruitt said on ABC's "This Week" program on Sunday.

Pruitt, the head of the Environmental Protection Agency, said Tuesday's order will be followed swiftly by actions to "make sure that whatever steps we take in the future will be pro-growth, pro-environment but within the framework of the Clean Air Act." He said it will be legal and is "an effort to undo the unlawful approach the previous administration engaged in and do it right going forward."

Under Obama, the EPA set a goal of reducing carbon dioxide emissions by 32 percent below 2005 levels by the year 2030, and its Clean Power Plan dictated specific targets for states to reach. The initiative has been in legal limbo since the Supreme Court stayed it in February 2016. Still, utilities have already shed coal-fired electricity and added natural gas and renewable power, partly in a bid to satisfy the looming requirements.

Opponents of the rule argue that the EPA overstepped its regulatory authority under the Clean Air Act by giving states broad carbon-cutting mandates instead of imposing specific requirements on individual facilities.

Coal Leases

President Donald Trump's long-awaited executive order also is slated to compel Interior Secretary Ryan Zinke to lift a moratorium on the sale of new coal leases on federal land. The actions set in motion by the order could take years to play out bureaucratically, but the directive will deliver immediate symbolic value.

Rescinding Obama's Clean Power Plan could help Trump fulfill his pledge to "cancel job-killing restrictions" on domestic energy. It also would undercut the carbon-cutting pledge that the U.S. and nearly 200 other countries made in Paris in 2015 -- an accord that Trump may disavow.

Support from coal miners helped propel Trump to victory by aiding wins in Pennsylvania, West Virginia and other states that have seen jobs tied to the fossil fuel decline. Trump has repeatedly promised to put miners back to work.

The change is not expected to return coal to its earlier dominance in electricity production, but the fossil fuel may see moderate growth as a result, according to projections from the Energy Information Administration. Use of natural gas by power plants also could decrease.

Even before he became EPA administrator, Pruitt was fighting the Clean Power Plan. As the state's attorney general, he had Oklahoma join more than two dozen other states, plus electric utilities, labor unions, business groups and coal miners, in challenging the rule. An array of environmental groups, public health advocates, renewable-energy developers, large corporations and 18 other states defended the initiative.

The U.S. Court of Appeals heard arguments on the challenge last September but hasn't ruled. The Trump administration can file a motion to hold the matter in abeyance as a way to begin rule-making aimed at rescinding the measure administratively. Environmental activists who are already defending the rule in court have vowed to fight such a move.

Washington Examiner
http://www.washingtonexaminer.com/trump-order-to-undo-obama-emissions-plan-coming-tuesday/article/2618486
Trump order to undo Obama emissions plan coming Tuesday
By Joseph Lawler 3/26/17 12:24PM

President Trump will issue an executive order on Tuesday to begin undoing former President Obama's rule on carbon emissions, Environmental Protection Agency head Scott Pruitt said Sunday.

"This is about making sure that we have a pro-growth and pro-environment approach to how we do regulation in this country," Pruitt said on ABC's This Week.

The order, he said, "will address the past administration's efforts to kill jobs across this country through the Clean Power Plan."

The plan, currently stayed by a February 2016 Supreme Court decision, sets specific carbon dioxide emission reduction targets for states, discouraging electricity produced from coal.

Pruitt said that Trump aimed to bring back coal jobs, and that future efforts from the EPA would be directed toward that end.

As for the Paris Agreement setting emissions targets for countries, Pruitt called it a "bad deal" because it cost the U.S. jobs without getting concessions from China and India.

Innovation in coal and natural gas extraction have lowered emissions while also lowering the price of electricity, Pruitt argued.

"This is an effort to undo the unlawful approach the previous administration engaged in and to do it right going forward with the mindset of being pro-growth and pro-environment, and we can achieve both," he said.

Washington Times
http://www.washingtontimes.com/news/2017/mar/26/executive-action-to-kill-clean-power-plan-coming-t/
Trump executive order to kill Obama-era Clean Power Plan coming this week: EPA chief
By Ben Wolfgang 3/26/17

President Trump this week will sign an executive order to begin unraveling the Clean Power Plan, EPA Administrator Scott Pruitt said Sunday, the first step in the lengthy process of dismantling the central piece of former President Obama's climate-change agenda.

The plan, which would limit carbon emissions from power plants and greatly reduce coal's share of U.S. power generation, was stayed by the U.S. Supreme Court and has not gone into full effect.

Still, Mr. Trump and Mr. Pruitt have said that formally eliminating the plan and returning certainty to the energy marketplace will drive down electricity prices and create jobs.

"For too long, over the last several years, we've accepted a narrative that if you're pro-growth, pro-jobs, you're anti-environment. If you're pro-environment, you're anti-jobs or anti-growth," he told ABC's "This Week."

"That's just not where we've been as a country throughout our existence. We've made tremendous progress on our environment and we can be both pro-jobs and pro-environment, and the executive order's going to address the past administration's effort to kill jobs across this country through the Clean Power Plan," Mr. Pruitt said.

The former Oklahoma attorney general predicted that getting rid of the plan would bring back coal mining and manufacturing jobs across the U.S.

Mr. Pruitt sued to halt the order while Oklahoma attorney general, one of several states that kept the plan tied up in the courts.

The executive order targeting the Clean Power Plan will be signed Tuesday, he said.

The executive order, however, is just the first step in what will be a complex process. The EPA still must hold public hearings, accept public comments, consult with stakeholders, and likely face numerous lawsuits in its effort to eliminate the Clean Power Plan altogether.

The process of removing the program from the books is expected to take at least one year, possibly longer.

Supporters of Mr. Obama's plan, including some Democratic-led states and environmental groups, argue it will create thousands of clean-energy jobs and help the U.S. meet ambitious goals to reduce carbon pollution set by an international agreement reached in Paris in late 2015.

Mr. Pruitt called the Paris accord on climate change a "bad deal" because he said it went too easy on China and India, who are among the world's leading producers of carbon dioxide.

"So we've penalized ourselves through lost jobs while China and India didn't take steps to address the issue internationally," he said. "So Paris was just a bad deal, in my estimation."

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Message

From: So, Katherine [so.katherine@epa.gov]
Sent: 4/26/2017 1:39:43 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
CC: So, Katherine [so.katherine@epa.gov]
Subject: BNA: Malfunction Emissions Case Delayed to Accommodate EPA Review, 4/26/17

BNA
http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=110163695&vname=dennotallissues&wsn=499980500&searchid=29771331&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0
Malfunction Emissions Case Delayed to Accommodate EPA Review
By Patrick Ambrosio 4/26/17

The Trump administration won a delay in yet another legal challenge to an Obama-era environmental regulation, this one over state plans to control industrial air pollution during periods when equipment starts up, shuts down or malfunctions.

The regulation at issue, known as a SIP Call, required 36 states to revise their state implementation plans to remove language that the Obama administration determined to be in violation of the Clean Air Act. The provisions the Environmental Protection Agency flagged include previously approved language that exempted industrial facilities from complying with emissions standards during startup and shutdown, and affirmative defense provisions that shielded power plants, refineries and other pollution sources from being assessed civil penalties associated with violations that resulted from unavoidable equipment malfunctions.

The Trump administration has sought to delay several cases to allow for a review of the underlying regulations and the legal positions taken by the Obama administration. In addition, President Donald Trump signed an executive order in March directing the EPA to review any regulation that could “potentially burden” domestic energy production.

The 2015 rule drew legal challenges from many of the affected states, as well as utilities including Southern Co. and Luminant Generation Co. The litigation was scheduled for oral arguments May 8, but the U.S. Court of Appeals for the District of Columbia Circuit, in an order issued late April 24, granted an EPA request to postpone the arguments (Walter Coke Inc. v. EPA, D.C. Cir., No. 15-1166, 4/24/17).

The D.C. Circuit in recent weeks has frozen several cases over Obama-era environmental rules, including lawsuits over the 2015 ozone standards and carbon dioxide standards for new power plants that were days away from being argued. Still pending are requests to halt progress on litigation related to two of the Obama administration's major regulations on the power sector: the Mercury and Air Toxics Standards and the Clean Power Plan rule on carbon emissions from existing plants.

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Message

From: McGonagle, Kevin [mcgonagle.kevin@epa.gov]
Sent: 4/19/2017 1:50:21 PM
To: Jefferson, Gayle [Jefferson.Gayle@epa.gov]; Mccabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Graham, Amy [graham.amy@epa.gov]; MacKinnon, Kathleen [MacKinnon.Kathleen@epa.gov]; Dibble, Christine [Dibble.Christine@epa.gov]; Younes, Lina [Younes.Lina@epa.gov]; AO OPA Media Relations [AO_OPA_Media_Relations@epa.gov]; Brennan, Thomas [Brennan.Thomas@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: Politico: Pruitt allies explore hiring private lawyers to rewrite EPA rule, 4/19/17

Politico
http://www.politico.com/story/2017/04/pruitt-water-rules-private-lawyers-237339
Pruitt allies explore hiring private lawyers to rewrite EPA rule
By Annie Snider 4/18/17, 5:35PM

Industry groups with close ties to EPA Administrator Scott Pruitt are considering a highly unusual approach to undoing the Obama administration's most controversial water regulation — pushing Pruitt to hand the job to private lawyers.

Such an approach would help Pruitt bypass the Environmental Protection Agency employees who spent five years writing the Waters of the U.S. regulation — the kinds of career federal bureaucrats whom supporters of President Donald Trump often deride as the "deep state." Trump has ordered the agency to replace the water rule, a sweeping regulation that has stirred up opposition from groups including the agriculture, oil and gas, and development industries.

But legal experts say privatizing the rule-making process in this manner would be almost unheard of. Although it's likely legally doable, they say, it would raise a host of ethical questions, while probably limiting the public's view into decisions about which streams, lakes and wetlands get federal protection.
Environmentalists call it alarming that anyone would even seriously discuss the possibility.

"To then say it's OK for a cabal of industry groups to put some gun for hire in charge of writing the rule, that just seems absolutely, wildly unethical," said John Rumpler, who directs the clean water program for Environment America. His group supports the 2015 rule, which increased the number of creeks and wetlands that receive automatic protection under the Clean Water Act after two muddled Supreme Court decisions.
Sen. Tom Carper of Delaware, the top Democrat on the Environment and Public Works Committee, expressed "incredulity" Tuesday after reading POLITICO's reporting on the potential outsourcing.

"I urge you in the strongest possible terms to disavow this reported industry plan, if true," Carper wrote Pruitt in a letter. He added, "I question the legal validity of allowing industry to assist the agency in writing a rule-making proposal, and consider it an utter and complete abdication of EPA's responsibility to protect the water and people of this country."

EPA has not responded in detail to questions about the issue. "To my knowledge, we are not contracting with an outside firm at this time for WOTUS," spokeswoman Liz Bowman said, using an acronym for the water regulation.

The idea of turning to private lawyers is taking shape in discussions among members of the Waters Advocacy Coalition, which advocates restraining the scope of federal water regulation on behalf of more than 60 industry groups including

the American Farm Bureau Federation and the National Mining Association. The coalition is represented by the firm Hunton & Williams, whose lawyers fought Obama-era environmental regulations alongside Pruitt when he was Oklahoma's attorney general.

Supporters of outsourcing the rule rewrite want to help Pruitt replace the Obama-era regulation quickly despite the agency's dearth of political appointees, multiple industry sources said, requesting anonymity to divulge private conversations. Industry insiders have reached out to lawyers who might be interested in leading a water-rule rewrite from outside the agency, according to an environmental lawyer who served in a previous Republican administration and recently received one such overture.

But members of the coalition appear torn on whether privatization is the right approach, according to sources familiar with the internal debate. It is unclear whether anyone has taken the idea to Pruitt or his staff, or whether the administration would be open to it.

EPA and other agencies routinely hire contractors to produce technical analyses or sort through public comments related to rule-makings, but tapping them to write the actual rule would be rare. And legal experts say it would stretch the limits of federal contracting law and present ethical questions for any lawyer who took on the work.

Environmentalists like Rumpler say key decisions about regulations are supposed to be made by people in Senate-confirmed positions to ensure a transparent, accountable rule-making process.

Still, outsourcing government work would not necessarily be out of character for Pruitt. As Oklahoma's attorney general, he regularly hired outside counsel to work on litigation and worked closely with industry groups to challenge environmental rules. In some cases he took industry-drafted language almost verbatim and sent it out on his office's letterhead, a 2014 New York Times article found.

Pruitt also has a history with Hunton & Williams, the water coalition's law firm. In 2013, the firm's senior director of governmental relations, Roderick Hastie, prepared talking points against an EPA rule that he encouraged Pruitt's deputy solicitor general to "cut and paste," according to emails released after an open-records lawsuit in Oklahoma. Pruitt also invited one of the firm's top attorneys to a 2013 Summit on Federalism and the Future of Fossil Fuels he hosted in Oklahoma City.

Don Parrish, senior director for regulatory relations at the American Farm Bureau Federation, said the idea has not been discussed at formal meetings of the Waters Advocacy Coalition, which he chairs.

"That's something that our coalition has not talked about nor would we take a position on," he said.

But Pruitt has touted the administration's move to roll back the water rule to industry groups. He vowed that "relief" was coming soon to farmers when he spoke at the Farm Bureau's Washington-based Advocacy Conference in February, just hours after Trump signed the executive order directing his agency to review and rewrite the Obama administration's water rule. Parrish said the coalition as a whole has not met with Pruitt or his team, but would not address whether individual members have.

It is not unusual for EPA to hear from experts representing both industry and environmental groups when writing rules, although the agency generally tries to avoid getting too close so as not to violate the Administrative Procedure Act. That law requires that all material and communications that inform the agency's decision be placed in the public record.

Past administrations have faced accusations that they got too close to that line. Conservatives criticized the Obama administration's closeness to environmental groups such as the Natural Resources Defense Council, accusing them of "secretly" colluding on climate change regulations, while Democrats denounced the secrecy of the meetings that former Vice President Dick Cheney's energy task force held with industry groups.

One argument in favor of outsourcing EPA's rule-writing now is a shortage of political appointees to handle the job. Trump has not nominated anyone to lead the agency's water and general counsel offices — two positions that were critical to writing the Obama-era rule — and it is an open question whether he will.

For now, the rewrite effort is being shepherded by Sarah Greenwalt, a senior adviser to Pruitt at EPA who went to work for him in Oklahoma just after finishing law school. But the bulk of the work is being done by career staffers in EPA's Office of Water. Nearly all of those staffers spent years building the Obama administration rule, raising concerns among some of Pruitt's allies about whether they can be trusted to dismantle it.

Meanwhile, some of the legal experts whom industry groups would like to lead the rewrite are reluctant to join the agency's staff.

Working as outside counsel on the rewrite could offer a seasoned lawyer more flexibility and more money than a government position would, while sidestepping a Senate confirmation fight. And experts say few legal obstacles would prevent the agency from tapping an outside lawyer for the task — despite rules that prohibit hiring outside contractors for "inherently governmental functions ... such as determining the content and application of regulations."

Agencies across government have become more and more reliant on contractors in recent decades. But typically, agencies that bring in outsiders for regulatory work specify in the paperwork that the contractor is offering only assistance, and that federal officials will make the final decision, said Dan Guttman, an expert on federal contracting at New York University Shanghai.

"You end up with this fiction that as long as the official signs the final document, it doesn't matter," Guttman, who investigated federal contracting as an aide to then-Sen. David Pryor (D-Ark.). "You deal with this by wordsmithing."

Laws designed to prevent conflicts of interest among federal contractors also may not prove much of a barrier, despite the likelihood that any law firm with the requisite Clean Water Act expertise would likely have a long roster of clients with a stake in a new regulation's outcome.
Any firm EPA hired would have to disclose its potential conflicts, but it could still win a contract if it demonstrates it is taking steps to avoid any impropriety — such as walling off its attorneys working on the rule from those representing clients with a stake in its outcome — and convinces Pruitt that its work would be in the government's interest.

Meanwhile, rules governing individual conflicts of interests, rather than corporate conflicts of interest, wouldn't apply to a contractor unless they were written into the contract, said Kathleen Clark, a Washington University Law School professor. For example, a federal employee with a weekend job working for a coal company would be automatically barred from working on a regulation that affected the coal industry — but a contractor in the same position would not, she said.

A bigger challenge could be finding a lawyer willing to do the work. Attorneys risk being disbarred if they represent opposing sides in litigation, and they take pains to avoid conflicts among their clients. Taking on a rewrite of the water rule could raise red flags at some of the firms with the most expertise in the Clean Water Act.

Even if these hurdles could be overcome, it's not clear that hiring an outside lawyer to run EPA rule-making would gain the agency anything besides a giant headache, said Cary Coglianese, who leads the University of Pennsylvania Law School's Program on Regulation. He said the rule-making process already allows ample opportunities for industry groups to weigh in, often in less obvious ways.

"What good lawyers always worry about is not only real conflicts of interest, but the appearance of conflicts of interest," Coglianese said. "If, indeed, you've got someone who looks too partisan and the agency's trying to basically circumvent the nomination and confirmation process by having a general counsel that's essentially on retainer — that's just the kind of swampy arrangement that the administration has claimed it wants to drain."

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Message

From: So, Katherine [so.katherine@epa.gov]
Sent: 4/18/2017 1:50:20 PM
To: McGonagle, Kevin [mcgonagle.kevin@epa.gov]; Jefferson, Gayle [Jefferson.Gayle@epa.gov]; Mccabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Graham, Amy [graham.amy@epa.gov]; MacKinnon, Kathleen [MacKinnon.Kathleen@epa.gov]; Dibble, Christine [Dibble.Christine@epa.gov]; Younes, Lina [Younes.Lina@epa.gov]; AO OPA Media Relations [AO_OPA_Media_Relations@epa.gov]; Brennan, Thomas [Brennan.Thomas@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
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Subject: New York Times: Trump policy advisers, split over Paris Accord, will debate U.S. role in pact, 4/18/17

New York Times
https://www.nytimes.com/2017/04/18/us/politics/trump-advisers-paris-climate-accord.html?_r=0
Trump policy advisers, split over Paris Accord, will debate U.S. role in pact
By Coral Davenport 4/18/17

WASHINGTON — President Trump's divided policy advisers will meet Tuesday afternoon to hash over whether Mr. Trump should withdraw the United States from the landmark Paris climate accord of 2015, and the side pressing the president to remain in the deal enters the pivotal meeting with the upper hand.

Mr. Trump plans to make a final decision on the fate of the Paris agreement before a meeting of the Group of 7 leading economies at the end of May, according to Sean Spicer, the White House press secretary.

On the campaign trail, Mr. Trump vowed to "cancel" the climate deal, and his most politically conservative advisers, including his senior strategist Stephen K. Bannon, have pushed him to follow through. But Mr. Bannon's influence has waned in recent weeks, while authority has risen for Mr. Trump's daughter Ivanka and son-in-law, Jared Kushner, who advocate staying in the accord.

Secretary of State Rex W. Tillerson, the former chief executive of Exxon Mobil, has also spoken in favor of "keeping a seat at the table" in the climate pact, and in recent days, major corporations have stepped forward to embrace that position.

While no decision has been made, experts tracking it say that view is gaining traction.

"We do not currently believe the Trump administration plans to withdraw from either Paris agreement," wrote Kevin Book, an analyst at ClearView Energy Partners, a Washington firm, in a memo to clients on Monday.

While Mr. Trump does not have the power to undo a multilateral United Nations accord, he could withdraw the world's largest economy from the pact, weakening it substantially. Such a move would win cheers from the nation's most powerful conservative political advocates, and give Mr. Trump bragging rights in coal country.

But withdrawing from the landmark accord that committed nearly every nation to take action against planet-warming emissions could create diplomatic blowback, while weakening American leadership in arenas far afield from energy and the environment.

Besides, keeping the United States' name on the accord does not obligate the Trump administration to abide by the ambitious emissions-control pledges of Mr. Trump's predecessor, Barack Obama. At least one senior White House climate policy adviser, George David Banks, has advocated staying in the agreement while replacing the Obama plan with a weaker, more industry-friendly pledge.

Over recent weeks, Mr. Banks has asked top officials at several major corporations, including Exxon Mobil, who have similar views, to submit letters to the White House confirming their support of staying in the Paris deal, even if in a modified form.

In response, Peter Trelenberg, the manager of environmental policy and planning at Exxon Mobil, wrote to Mr. Banks, "Exxon Mobil supports the Paris agreement as an effective framework for addressing the risks of climate change."

Royal Dutch Shell and BP, European companies with significant investments in the United States, have also endorsed the accord.

Last month, Representative Kevin Cramer, a Republican from oil-, gas- and coal-rich North Dakota, wrote, "The U.S. should present a new pledge that does no harm to our economy." Mr. Cramer, an early supporter of Donald J. Trump, advised Mr. Trump on energy issues during his presidential campaign.

Colin Marshall, the chief executive of Cloud Peak, a major coal producer in Wyoming, the nation's largest coal-mining state, also wrote to Mr. Trump: "By remaining in the Paris agreement, albeit with a much different pledge on emissions, you can help shape a more rational international approach to climate policy."

Regardless of his decision, Mr. Trump has already undermined the United States' ability to meet its Paris pledge. Mr. Obama declared that the United States would reduce its planet-warming carbon pollution about 26 percent from 2005 levels by 2025. Its primary policy for meeting that target would be the Clean Power Plan, a set of Environmental Protection Agency regulations designed to shutter hundreds of heavily polluting coal-fired power plants, the nation's chief source of greenhouse emissions.

Last month, Mr. Trump directed Scott Pruitt, the head of the Environmental Protection Agency, to begin the legal process of dismantling the Clean Power Plan. Whether or not the United States remains in the Paris pact, it almost certainly will not be able to meet its pledged pollution-reduction targets.

Mr. Pruitt has emerged as a leading voice for withdrawal from the Paris deal. Last week, he told Fox News, "It's something we need to exit."

That reflects the views of powerful conservative political advocacy groups such as Americans for Prosperity, which is funded by the influential libertarian brothers Charles G. and David H. Koch.

"What we say to the White House is that it's clearly a terrible agreement for the American people," said Tim Phillips, the president of Americans for Prosperity.

That view is also backed by economists at the Heritage Foundation, the conservative think tank that has supplied the Trump administration with many of its policy proposals.

Harold G. Hamm, the chief executive of Continental Resources and a Trump campaign adviser, has also condemned the pact. "Cancel the Paris climate treaty and any other agreements entered into unilaterally and without the consent of Congress," Mr. Hamm wrote in a letter to Mr. Trump before his inauguration.

Bob Murray, the chief executive of the coal company Murray Energy, who is personally close with the president, has also strongly criticized the deal.

Mr. Book, the analyst, noted that the risks of withdrawing from the Paris deal include not only diplomatic ill will, but also the possibility of trade reprisals. Countries that tax emissions of carbon dioxide pollution could place a carbon tariff on imports of American-made goods. The European Union currently charges polluters fees for carbon emissions, while China, Mexico and Canada are in the process of carrying out such programs.

"If the U.S. were to pull out, it would do so in the context that would invite trade reprisals," Mr. Book said. "It could lead to a carbon tariff trade war."

Daniel M. Bodansky, an expert in international environmental agreements at Arizona State University, said that remaining in the Paris deal but weakening the United States' commitment could still have the effect of generating some ill will — but without the repercussions of trade sanctions.

"They could just submit a new plan," he said. "People internationally would not be happy, but they'd be a lot less unhappy than if the U.S. actually pulled out."

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Message

From: So, Katherine [so.katherine@epa.gov]
Sent: 3/28/2017 8:51:05 PM
To: Jefferson, Gayle [Jefferson.Gayle@epa.gov]; McGonagle, Kevin [mcgonagle.kevin@epa.gov]; Mccabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; AO OPA Media Relations [AO_OPA_Media_Relations@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]
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Subject: RE: Clean Power Plan 3/28/17

Below: CNBC, E&E News, InsideEPA, Washington Post, E&E News, The Guardian, New York Times, AP, Reuters, Bloomberg, Politico, The Hill, E&E News (2), Huffington Post, USA Today, CNN, Mashable, Gizmodo, Daily Caller, BNA, Wall Street Journal, BBC, Reuters, Politico (2), E&E News (3), CNN, Huffington Post, Washington Times (3/27), Washington Post (3/27), The Hill (2) (3/27), InsideEPA (3/27), Washington Examiner (3/27), Mother Jones (3/27)

CNBC
http://www.cnbc.com/2017/03/28/epa-chief-scott-pruitt-signals-less-aggressive-response-to-emissions.html
New EPA chief plans 'humble' approach to regulating CO2 emissions
By Tom DiChristopher 3/28/17

The Environmental Protection Agency will take a less aggressive approach to regulating carbon dioxide emissions than in the past, the agency's administrator Scott Pruitt signaled on Tuesday.

Pruitt spoke shortly after President Donald Trump signed an executive order aimed at scaling back the previous administration's efforts to mitigate the impact of climate change.

"I think what comes next is a much more humble view of what the EPA's response to CO2 is within the Clean Air Act," he told CNBC's "Closing Bell."

The EPA has concluded that carbon dioxide, or CO2, is the primary driver of man-made climate change. But Pruitt told CNBC earlier this month he does not currently believe CO2 is a "primary contributor" to global warming.

E&E News
http://www.eenews.net/eenewspm/2017/03/28/stories/1060052221
Fanfare at EPA as Trump heralds 'new energy revolution'
By Kevin Bogardus and Robin Bravender 3/28/17

President Trump and his allies celebrated at U.S. EPA headquarters today as they quashed the Obama administration's climate policies.

Flanked by his energy and environmental lieutenants and about a dozen coal miners, Trump signed a long-awaited executive order that immediately knocks down some Obama environmental efforts and kicks off the process of repealing major climate regulations.

"Together, we are going to start a new energy revolution, one that celebrates American production on American soil," Trump told attendees at the event at the William Jefferson Clinton Building in Washington, D.C.

The order takes aim at several high-profile Obama climate policies. It directs EPA to review the Obama administration's Clean Power Plan to limit power plants' greenhouse gases and wipes out Obama's coal-leasing moratorium on public lands, among other things (*Greenwire*, March 27).

The signing ceremony was jocular, with Trump appearing alongside Vice President Mike Pence, EPA Administrator Scott Pruitt, Interior Secretary Ryan Zinke and Energy Secretary Rick Perry. About a dozen coal miners were also on stage for the event, which was held in the Map Room of EPA headquarters.

"You're going back to work," Trump told the miners, pledging that today's executive order — along with his administration's energy policies more broadly — would help to revive the ailing coal mining industry. Trump joked that the miners were tough-looking, noting that he wouldn't want to mess with them.

Introducing Trump to the crowd, Pence declared, "The war on coal is over."

Trump ally and coal magnate Robert Murray, CEO of Murray Energy Corp., was seated in the front row for the event. At one point before the ceremony, Murray, a major Republican donor, was in discussion with Jay Timmons, president and CEO of the National Association of Manufacturers, whose group backed Pruitt's nomination with a television ad campaign.

Also in the audience today for Trump's victory lap were several other prominent critics of the Obama administration's energy policies. Those included West Virginia Republican Attorney General Patrick Morrisey, Sen. Shelley Moore Capito (R-W.Va.), and Senate Environment and Public Works Chairman John Barrasso (R-Wyo.).

In an interview with E&E News before the ceremony began, Murray had high praise for Trump's order.

"I think it's wonderful, not just for the United States coal industry, our miners and their families, but it's wonderful for America," Murray said. "Mr. Obama is the greatest destroyer that America ever had."

His company sued EPA on the Clean Power Plan, and he noted it had been stalled by the Supreme Court.

"We got the stay. Now we're going to get it killed," Murray said.

In another interview, Morrisey, who also sued EPA over the Clean Power Plan, applauded Trump for taking action.

"It's so good to have a president and an EPA administrator that understands that these regulations are unlawful and that they are highly problematic," Morrisey said.

Some conservatives had hoped for more from Trump's order today, including revoking EPA's 2009 endangerment finding against carbon dioxide — the basis for the agency's climate change rules — as well as withdrawing from the 2015 Paris climate agreement (*Greenwire*, March 28).

Murray said those issues need to be looked at.

"It has to be addressed, the endangerment finding," Murray said. "We have a list of things that need to be done, and overturning the endangerment finding is definitely of the issues that needs to be done."

Murray said the president was correct to say on the campaign trail that the United States should withdraw from the Paris Agreement.

"We need to withdraw," Murray said. "It is a fraud."

Morrisey said to have patience regarding Trump's next steps on environmental rules.
"This is a process," Morrisey said. "You can't do everything at the same time."

'Pixie dust and hope'

Pruitt welcomed visitors to his agency today. "Perhaps some of you, this is your first visit to the EPA," he said. "It's good to see some coal miners at the EPA."

Pruitt, who helped lead the legal charge against the Clean Power Plan as Oklahoma's attorney general, said, "We're no longer going to have a regulatory assault on any given sector of our economy. That's going to end by the signing of this executive order."
Zinke, a former Navy SEAL, said Trump's move would promote national security by bolstering energy independence. And he criticized the Obama administration's energy policies: "Our nation can't run on pixie dust and hope. And the last eight years showed that."

Perry heralded the move as a "bold action to unlock America's resources." He said, "Mr. President, I remember clearly your comments to me when we discussed my role at the Energy Department. You said, 'I don't want America to just be energy independent. I want America to be energy dominant.'"

EPA employees were encouraged to watch Trump's signing ceremony on the agency's own television network, EPAtv, due to "limited space" at the event, according to an agencywide email sent by EPA Chief of Staff Ryan Jackson and obtained by E&E News.
Career staffers were spotted in the back corner of the room during the ceremony, including acting Deputy EPA Administrator Mike Flynn.

After the ceremony, Flynn was asked for his thoughts on Trump's order. He declined to comment as he left the room.

InsideEPA
https://insideepa.com/daily-news/trump-promises-really-clean-coal-he-signs-order-targeting-epa-rules
Trump Promises 'Really Clean Coal' As He Signs Order Targeting EPA Rules
3/28/17

Flanked by a group of coal miners, Vice President Mike Pence and his energy and environment Cabinet, President Donald Trump signed an executive order March 28 at EPA headquarters that targets several Obama-era climate regulations for repeal or review in a move the president said will "cancel job-killing regulations."

"We're putting an end to the war on coal. We're going to have clean coal, really clean coal," Trump said in remarks before signing the so-called "Energy Independence" order. He added that, with the actions, his administration would be "ending the theft of American prosperity and rebuilding our beloved economy." The order will also "allow EPA to focus on its primary mission of protecting our air and our water," Trump said.

The executive order -- the text of which has not yet been released -- will initiate the review of a number of Obama administration climate policies, including EPA's existing power plant greenhouse gas rule known as the Clean Power Plan. And it requires EPA to identify a slate of rules that may hamper energy production.

Trump referred to the rule as imposing a "crushing attack," saying "perhaps no single regulation threatens" coal miners and energy companies more.

Trump, during his remarks, noted his administration would continue to enforce regulations to protect clean air and water, but "so many are unnecessary and so many are job-killing. We're getting rid of the bad ones." He later added the action would "really lead to unbelievable prosperity all throughout the country."

Administration officials echoed Trump in remarks prior to the signing. EPA Administrator Scott Pruitt said the executive order helps to "set a new journey, a pathway forward with how we're going to do business in this country with respect to energy and environment."

Pruitt also noted he is "not going to allow regulations here at the EPA to pick winners and losers. We're going to play within the rules."

Interior Secretary Ryan Zinke lauded the president for his "decisive action" that he said would help the environment, jobs and national security. "Our nation can't run on pixie dust and hope, and the last eight years showed that," he said.

And Energy Secretary Rick Perry praised the executive order for beginning the process to "unravel the red tape" that he said has stymied investment and energy production.

"We've seen the downside of poorly designed government policies. It resulted in distorted markets and the weakening of the American energy portfolio," Perry said.

Referencing conversations he has had with Trump, Perry noted Trump told him, "I don't want America to just be energy independent. I want America to be energy dominant."

And as Trump lifted his pen to sign the order, he turned to a coal miner standing next to him, saying: "You know what it says right? You're going back to work."

Washington Post
https://www.washingtonpost.com/national/health-science/trump-moves-decisively-to-wipe-out-obamas-climate-change-record/2017/03/27/411043d4-132c-11e7-9e4f-09aa75d3ec57_story.html?utm_term=.ff0cbd7a5bb0
Trump moves decisively to wipe out Obama's climate change record
By Juliet Ellperin and Brady Dennis 3/28/17, 3:54PM

President Trump on Tuesday took the most significant step yet in obliterating his predecessor's environmental record, instructing federal regulators to rewrite key rules curbing U.S. carbon emissions.

The sweeping executive order — which the president signed with great fanfare in the Environmental Protection Agency's Map Room — also seeks to lift a moratorium on federal coal leasing and remove the requirement that federal officials consider the impact of climate change when making decisions.

The order sends an unmistakable signal that just as President Barack Obama sought to weave climate considerations into every aspect of the federal government, Trump is hoping to rip that approach out by its roots. The president did not utter the words "climate change" once, instead emphasizing that the move would spur job creation in the fossil fuel industry.

"Our administration is putting an end to the war on coal," he said, accompanied onstage by more than a dozen coal miners, Vice President Pence and three Cabinet members. "We're ending the theft of American prosperity, and rebuilding our beloved country."

Some of the measures could take years to implement and are unlikely to alter broader economic trends that are shifting the nation's electricity mix from coal-fired generation to natural gas and renewables. The order is silent on whether the United States should withdraw from the 2015 Paris climate agreement, under which it has pledged to cut its greenhouse gas emissions between 26 and 28 percent by 2025 compared to 2005 levels, because the administration remains divided on that question.

The order comes after several moves by Trump to roll back Obama-era restrictions on mining, drilling and coal- and gas-burning operations. In his first two months as president, Trump has nullified a regulation barring surface-mining companies from polluting waterways and set aside a new accounting system that would have compelled coal companies and other energy firms to pay more in federal royalties.

The administration also has announced it will reconsider stricter fuel-efficiency standards for cars and light trucks and has approved two major oil pipelines, Dakota Access and Keystone XL, that Obama had halted.

Accelerating fossil-fuel production on federal lands and sidelining climate considerations could lead to higher emissions of the greenhouse gases driving climate change and complicate a global effort to curb the world's carbon output. But Trump has repeatedly questioned whether climate change is underway and emphasized that he is determined to deliver for the voters in coal country who helped him win the Oval Office.

The president thanked the miners onstage twice during the ceremony, and as they gathered around him when he signed the executive order, he looked up and remarked, "You know what it says, right? You're going back to work."

U.S. coal jobs, which number about 75,000, have been declining for decades. A senior administration official who briefed reporters Monday evening did not predict how many jobs might be spurred by this shift in policy.

Still, Sen. James M. Inhofe (R-Oka.) and other administration supporters said the change in policy would have a tangible impact on the economy. "This order is a clear sign to the country that Trump is serious about unleashing this country's energy dominance," Inhofe said in a statement.

Legal fight possible

The centerpiece of the new presidential directive, telling the Environmental Protection Agency to begin rewriting the 2015 regulation that limits greenhouse-gas emissions from existing power plants, will trigger a laborious rulemaking process and a possible legal fight.

The agency must first get permission from the U.S. Court of Appeals for the D.C. Circuit, where the rule is tied up in litigation, to revisit the matter. Then, agency officials will have to justify reaching the opposite conclusion of the Obama EPA, which argued it was technically feasible and legally warranted to reduce carbon pollution by about one-third by 2030, compared with 2005 levels.

"So, for the president, even if he would like to revoke the Clean Power Plan, he doesn't have legal authority to do that," said Jeffrey Holmstead, a partner at the Bracewell law firm who opposes the Obama-era rule. Holmstead, who headed the EPA's air and radiation office under President George W. Bush, said he thinks the agency can justify reversing the regulation. But "they have to justify why they have changed," he added.

See how far-reaching the Chesapeake Bay and Great Lakes programs are View Graphic
While environmental groups decried Trump's move, mining officials welcomed it as an important course correction in federal energy policy.

"This rule was an unlawful attempt to radically transform the nation's power grid, destroying valuable energy assets and leaving our economy more vulnerable to rising power prices — all for an insignificant environmental benefit," said Hal Quinn, president and chief executive of the National Mining Association.

Environmentalists vowed to fight the executive order in court and press ahead with their goals on the state level.

David Doniger, director of the Natural Resources Defense Council's climate and clean-air program, said unwinding the Clean Power Plan will not happen quickly, no matter what the president wants. "Tearing the rules down require going through the same process it took to build them up," Doniger said. "We will make them face the music at every step." Christopher Field, a professor at Stanford University's Wood Institute for the Environment, said in an email that the directive carries long-term risks, rather than immediate ones. "Some are risks from eroding the position of U.S. companies in the clean energy sector," Field said. "Others are from the loss of irreplaceable natural heritage that is put in jeopardy by ill-conceived policies."

The president will also instruct the Interior Department to rewrite a 2015 rule, currently stayed in court, that imposes restrictions on hydraulic fracturing on federal and tribal lands. The directive will also make it easier to flare methane in oil and gas operations on federal land, by triggering the review of a rule the Interior Department finalized in November.

More immediate actions

Other aspects of the executive order can take effect immediately, though it is unclear how quickly they will translate into greater coal extraction. One section overturns a 2016 White House directive to consider climate change when agencies conduct reviews under the National Environmental Policy Act, a sweeping law that informed any federal decisions that have a significant environmental impact.

Another provision instructs Interior's Bureau of Land Management to lift a freeze on federal coal leasing. That moratorium has been in effect since December 2015.
Tom Sanzillo, director of finance for the Institute for Energy Economics and Financial Analysis, said in an interview that the move "becomes a largely politically symbolic measure for right now" because other, lower-carbon sources of energy are out-competing coal. He noted that U.S. coal consumption has declined 27 percent since 2005, from 1.02 billion tons to 739 million tons in 2016, its lowest level in nearly four decades.

Does the Trump administration believe in climate change?

President Trump and many of his top aides have expressed skepticism about climate change, while others say human activity is to blame for global warming. So what's the administration's real position? (Peter Stevenson/The Washington Post)

"They're not going to reverse the fundamental economic law here," Sanzillo said. "There's no market signal that's telling them they should be mining more coal."

Still, regulatory relief could make some coal firms, nearly 50 of which have filed for bankruptcy since 2012, somewhat more economically viable. Some of the sector's biggest companies — including Arch Coal, Peabody Energy and Alpha Natural Resources — are just now emerging from bankruptcy protection.

Ethan Zindler, head of U.S. research at Bloomberg New Energy Finance, said in an email that solar and wind are competitive with coal in some parts of the country and that natural gas ranks as the lowest-cost source of electricity generation overall. The sector that could suffer the greatest hit from the elimination of the Clean Power Plan is nuclear energy, which provides about a fifth of U.S. businesses' and households' power.

"Many of the 100 or so U.S. plants are aging, and approximately a third are economically uncompetitive today," Zindler said. Without stricter federal emissions limits, he added, "there may be little to stop the retirement of these plants in coming years and their replacement with a combination of gas/wind/solar."

National Rural Electric Cooperative Association CEO Jim Matheson, whose group challenged the Clean Power Plan in federal court, said in an interview that he does not anticipate many of his members will start building new coal-fired plants. But for those who have already invested heavily in keeping their coal plants operating, he said, "It has given them much greater flexibility to maintain more reasonably-priced and affordable power for our consumers."

Separately, Trump has instructed federal officials to abandon the practice of factoring in the impact of climate change — what is dubbed "the social cost of carbon" — in their policymaking decisions. That calculus, which is currently set at $36 per ton of carbon dioxide, aims to capture the negative consequences of allowing greenhouse-gas emissions to continue to rise. But some conservatives have criticized it as too sweeping.

Federal officials will return to the traditional cost-benefit analysis outlined in a 2003 Office of Management and Budget guidance, which appears to put the cost associated with carbon emissions at zero.

As Trump seeks to scale back federal limits on greenhouse gas emissions, states and cities are likely to take on a larger role in charting the course forward.

An analysis by the Rhodium Group, an economic consulting firm, found that Trump's forthcoming executive order would slow the country's shift away from carbon-emitting sources of energy. It found after Trump's action, the United States would be 14 percent below its 2005 emissions levels by 2025, compared to 21 percent below that mark had current Obama-era policies remained in place.

All three West Coast governors and a handful of mayors issued a statement within minutes of the order's signing, vowing to press ahead with their own policies to cut carbon emissions. In an interview, California Gov. Jerry Brown (D), said his state would fight to maintain strict carbon standards in court, and would participate in U.N. climate talks to help foster further action overseas.

" Gutting the Clean Power Plan is a colossal mistake, and defies science itself," Brown said. "Erasing climate change may take place in Donald Trump's mind, but nowhere else."

Tim Profeta, who directs Duke University's Nicholas Institute for Environmental Policy Solutions, said regulators from more than half-dozen states in the Southeast are now talking about how to chart their own path forward. Having met for nearly three years, the group stopped discussing how to comply with the Clean Power Plan after November's election, but it is still talking.

"We are now talking about the evolution of the power sector in an environment of uncertainty," Profeta said in an interview. "We're seeing the beginning of states taking control of their destiny."

E&E News
http://www.eenews.net/eenewspm/2017/03/28/stories/1060052217
States vow to defend rule
By Hannah Hess 3/28/17

The attorneys general of 16 states and the District of Columbia today vowed to protect U.S. EPA's regulations on carbon dioxide emissions from President Trump's directive on energy.

New York Attorney General Eric Schneiderman (D) led the coalition, along with the attorneys general from Vermont, Connecticut, Maryland, Massachusetts, Virginia, California, Delaware, Hawaii, Illinois, Iowa, Maine, New Mexico, Oregon, Rhode Island and Washington.

"We strongly oppose President Trump's executive order that seeks to dismantle the Clean Power Plan," they said in a joint statement.

"Addressing our country's largest source of carbon pollution — existing fossil fuel-burning power plants — is both required under the Clean Air Act and essential to mitigating climate change's growing harm to our public health, environments, and economies," they continued.

"We won't hesitate to protect those we serve — including by aggressively opposing in court President Trump's actions that ignore both the law and the critical importance of confronting the very real threat of climate change," they added this afternoon.

Also joining the coalition today were the chief legal officers of the cities of Boulder, Colo.; Chicago; New York City; Philadelphia; and South Miami and Broward County in Florida.

Today marks one year since Schneiderman joined former Vice President Al Gore and a coalition of state attorneys general to announce a multistate effort to tackle climate change, including further investigations into whether fossil fuel companies lied to investors and the public about the impacts of global warming (*Greenwire*, March 29, 2016). That effort also included the U.S. Virgin Islands and Minnesota.

A free-market group has been battling in court for communications related to the effort by state attorneys general to defend Obama-era climate regulations.

The Energy & Environment Legal Institute is in Vermont today arguing for the release of records that it alleges show the involvement of major Democratic Party donors and outside political activists in the campaign by state officials.

In November 2015, a coalition of 25 states, cities and counties led by Schneiderman intervened in defense of the Clean Power Plan against legal challenges in the U.S. Court of Appeals for the District of Columbia Circuit.

Many of the same stakeholders wrote a letter to Trump prior to his inauguration urging him to continue to defend the plan in court (*Greenwire*, Jan. 3).

The Guardian
https://www.theguardian.com/us-news/2017/mar/28/trump-clean-power-plan-executive-order-coal-industry
Trump moves to dismantle Obama's climate legacy with executive oder
By David Smith 3/28/17, 3:16PM

Donald Trump launched an all-out assault on Barack Obama's climate change legacy on Tuesday with a sweeping executive order that undermines America's commitment to the Paris agreement.

Watched by coalminers at a ceremony at the Environmental Protection Agency in Washington, the president signed an order to trigger a review of the clean power plan, Obama's flagship policy to curb carbon emissions, and rescind a moratorium on the sale of coalmining leases on federal lands.

But the move was swiftly condemned by environmentalists as a "dangerous" and "embarrassing" attempt to turn back the clock that would do little to revive the US coal industry while threatening cooperation with major polluters such as China and India.

In a speech before he signed the order, Trump promised "a new era in American energy and production and job creation". He said: "The action I'm taking today will eliminate federal overreach, restore economic freedom and allow our workers and companies to thrive and compete on a level playing field for the first time in a long time. I'm not just talking eight years."

Trump promised the measures would be "bringing back our jobs, bringing back our dreams and making America wealthy again".

He praised coalminers in the room as "amazing" and "incredible", recalling that he heard about their struggles over the past two years. "I made them this promise: we will put our miners back to work ... Today I'm putting an end to the war on coal."

Trump also pledged a future of "clean coal", and dismissed "the so-called clean power plan" as "a crushing attack on American industry". The executive order also lifts a moratorium on the sale of new coal leases on federal land, removes "job killing restrictions" on energy production, and returns power to state level.

Trump's acceptance of climate change science has long been in question. In 2014 he tweeted: "Global warming is an expensive hoax!" On Tuesday his press secretary, Sean Spicer, ducked a question over whether he still takes this view. "I think you'll hear more today about the climate and what he believes," Spicer said.

"I think he understands – he does not believe that ... there is a binary choice been job creation, economic growth, and caring about the environment, and that's what we should be focusing on. I think at the end of the day, where we should be focusing is making sure that all Americans have clean water, clean air and that we do what we can to preserve and protect our environment."

The clean power plan – introduced by Obama in 2015 but blocked by the courts last year – was intended to restrict greenhouse gas emissions from power plants.

Spicer said that Tuesday's order included "a review of the new performance standards for coal-fired and natural gas-fired plants that amount to a de facto ban on new coal plant production in the United States". He told reporters: "This is great news for states like Wyoming, West Virginia, Kentucky, Pennsylvania and others."

All the states listed voted for Trump in last November's presidential election. The executive order continues his aggressive endeavour to unravel his predecessor's policies and strip away regulations in what his chief strategist, Steve Bannon, has called "the deconstruction of the administrative state". This includes radically diminishing the Environmental Protection Agency (EPA).

Spicer said: "For too long the federal government has acted like a barrier to energy independence and innovation."

The president has previously condemned the clean power rule and other regulations as placing an unnecessary burden on American workers and the struggling US coal industry, which faces growing competition from natural gas, wind and solar.

Trump accused Obama of a "war on coal" and has promised to revitalise the coal industry. At a rally last week in Kentucky, he said he had already removed some burdensome regulations and insisted the new executive order would go further. "We are going to put our coalminers back to work," he told the crowd.
Advertisement

Spicer said on Tuesday: "The miners and the owners are very, very bullish on this. The people who are actually in the business applaud this effort, believe that it will do a lot to revive the industry."

But the order was condemned by climate change activists, including Al Gore, the former vice-president, who describe it as "a misguided step away from a sustainable, carbon-free future for ourselves and generations to come".

Gina McCarthy, a former EPA administrator, accused the Trump administration of wanting "us to travel back to when smokestacks damaged our health and polluted our air, instead of taking every opportunity to support clean jobs of the future".

She added: "This is not just dangerous; it's embarrassing to us and our businesses on a global scale to be dismissing opportunities for new technologies, economic growth, and US leadership."

Sheldon Whitehouse, the top Democrat on the Senate environment and public works subcommittee on clean air and nuclear safety, said: "Just a few years ago, Donald Trump and his children supported 'meaningful and effective measures' to fight climate change, calling it 'scientifically irrefutable' and its consequences 'catastrophic' and 'irreversible'. Today he began to unravel the clean power plan, one of the most important actions we have taken to fight climate change, just like the big polluters wanted."

He added: "The most voracious and malign special interest in American politics – the fossil fuel industry – has captured the Trump administration, installed its top henchmen at the EPA, and gone to work trying to unwind any environmental and public health safeguard that gets in the way of its profits."

Obama was dubbed the first "climate president" for acknowledging the real threat of global warming, although critics argued his record was blemished by investments in dirty fuels around the world. In 2015, the clean power plan was billed as the strongest action ever on climate change by a US president. Under the subsequent Paris accord, the US agreed to cut its greenhouse gas emissions 26-28% by 2025 compared with 2005 levels.

Trump and his allies, including the EPA chief, Scott Pruitt, have previously criticised the Paris agreement involving nearly 200 countries. A senior administration official said on Monday: "In terms of the Paris agreement, whether we stay in or not is still under discussion."

Tuesday's order seeks to suspend, rescind or review more than half a dozen measures in an effort to boost domestic energy production. These include Obama's 2013 climate action plan, a major fracking regulation, guidelines published by the White House Council on Environmental Quality last August, and estimates of the social costs of carbon and other greenhouses gases.

The 2015 clean power plan has been on hold since 2016 while a federal appeals court considers a challenge by coal-friendly states and more than 100 companies. The attempt to roll it back completely faces a complex process of rewriting rules and fending off legal challenges from states such as California and New York, environmental groups and sections of industry.

"Whatever process was used create it, that process will have to be used to undo it," said Richard Lazarus, an environmental law expert at Harvard University. "The more they rush in, the more likely they make a mistake."

Laurence Tubiana, chief executive of the European Climate Foundation. said: "Sending the clean power plan back to the drawing board might earn President Trump a few political points from a narrow interest group, but should this see the light of day, it will hurt the vast majority of Americans as it will propel the economy backwards so that it resembles something from the 19th century.

"The good news is that it will take much more than today's order to stop domestic climate action in the US – indeed, this document is likely to spend years in court. What's more, there are countless countries ready to step up and deliver on their climate promises and take advantage of Mr Trump's short-termism to reap the benefits of the transition to the low-carbon economy."

Lease applications blocked by the Obama moratorium included more than 1.8bn tons of coal from two dozen mines, the Associated Press reported. Burning that coal would unleash an estimated 3.4bn tons of carbon dioxide – equivalent to a year of emissions from 700m cars, it said.

But coal still faces competition from cheap and abundant natural gas, partly due to advances in drilling such as hydraulic fracturing, or fracking. From 2011 to 2016, the coalmining industry lost about 60,000 jobs, leaving just over 77,000 miners, according to preliminary government figures.

Michael Bloomberg, the former mayor of New York, said: "No matter what any elected official says, rescinding commonsense climate change regulations and popular public health protections will not revive the coal industry or put thousands of miners back to work.

"Market forces, including consumer preferences and technological advancement, are the primary reason for the surge in cleaner forms of energy. In fact, even without the clean power plan, we are likely to hit its emissions targets ahead of schedule – because consumers, cities and businesses will continue leading on public health and climate change even when Washington won't."

But the president's actions were praised by the Heritage Foundation, a conservative thinktank. Nick Loris, a fellow in energy and environmental policy, said: "Wealth equals health. It's not about being a fossil fuel stooge; it's about allowing them to be competitive."

New York Times
https://www.nytimes.com/2017/03/28/climate/trump-executive-order-climate-change.html
Trump Signs Executive Order Unwinding Obama Climate Policies
By Coral Davenport 3/28/17

WASHINGTON — President Trump signed on Tuesday a much-anticipated executive order intended to roll back most of President Barack Obama's climate-change legacy, celebrating the move as a way to promote energy independence and to restore thousands of lost coal industry jobs.

Flanked by coal miners at a ceremony at the Environmental Protection Agency, Mr. Trump signed a short document titled the "Energy Independence" executive order, directing the agency to start the legal process of withdrawing and rewriting the Clean Power Plan, the centerpiece of Mr. Obama's policies to fight global warming.

The order also takes aim at a suite of narrower but significant Obama-era climate and environmental policies, including lifting a short-term ban on new coal mining on public lands.

The executive order does not address the United States' participation in the 2015 Paris Agreement, the landmark accord that committed nearly every country to take steps to reduce climate-altering pollution. But experts note that if the Trump program is enacted, it will all but ensure that the United States cannot meet its clean air commitments under the accord.

Mr. Trump advertised the moves as a way to decrease the nation's dependence on imported fuels and revive the flagging coal industry.

This action by Trump places the U.S. completely out of step with most of the rest of the world in regard to climate change.

Trump's the president and we're not. He issued the order simply because President Obama promoted it. As Trump is a Republican, if President...

This country needs to develop a coal-powered pickup truck. It would be a win-win-win for everyone involved. Pickup trucks are very popular...

But energy economists say the order falls short of both of those goals — in part because the United States already largely relies on domestic sources for the coal and natural gas that fires most of the nation's power plants.

"We don't import coal," said Robert N. Stavins, an energy economist at Harvard University. "So in terms of the Clean Power Plan, this has nothing to do with so-called energy independence whatsoever."

Scott Pruitt, the E.P.A. administrator, said in an interview on ABC News on Sunday that the order will help the United States "be both pro-jobs and pro-environment."

But coal miners should not assume their jobs will return if Trump's regulations take effect.

The new order would mean that older coal plants that had been marked for closing would probably stay open for a few years longer, extending the demand for coal, said Robert W. Godby, an energy economist at the University of Wyoming.

But even so, "the mines that are staying open are using more mechanization," he said.

"They're not hiring people," he continued.

"So even if we saw an increase in coal production, we could see a decrease in coal jobs," he added.

Legal experts say it could take years for the Trump administration to unwind the Clean Power Plan, which has not yet been carried out because it has been temporarily frozen by a Supreme Court order. Those regulations sought to cut planet-warming carbon dioxide pollution from coal-fired power plants. If enacted, they would have shut down hundreds of those plants, frozen construction of future plants and replaced them with wind and solar farms and other renewable energy sources.

Throughout his campaign, Mr. Trump highlighted his support of coal miners, holding multiple rallies in coal country and vowing to restore lost jobs to the flagging industry. At a rally last week in Kentucky, Mr. Trump vowed that his executive order would "save our wonderful coal miners from continuing to be put out of work."

While coal mining jobs have dropped in the United States, they do not represent a significant portion of the American economy. Coal companies employed about 65,971 miners in 2015, down from 87,755 in 2008, according to Energy Department statistics.

And though the percentage of coal mining jobs dropped sharply, economists said that was not driven by the Clean Power Plan. Rather, they blamed two key forces: an increase in the production of natural gas, which is a cheaper, cleaner-burning alternative to coal, and an increase in automation, which allowed coal companies to produce more fuel with fewer employees. The rollback of Mr. Obama's regulations will not change either of those forces, economists say.

"The problem with coal jobs has not been CO_2 regulations, so this will probably not bring back coal jobs," Mr. Godby said. "The problem has been that there has not been market demand for coal."

The coal industry nonetheless cheered the move.

"These actions are vital to the American coal industry, to our survival, and to getting some of our coal families back to work," said Robert E. Murray, the chief executive of Murray Energy, one of the nation's largest coal mining companies.

But even Mr. Murray conceded that he did not expect Mr. Trump's order to return coal mining numbers to their former strength. "I really don't know how far the coal industry can be brought back," he said.

Mr. Trump's directive also eliminates about a half-dozen of Mr. Obama's smaller executive orders and memorandums related to combating climate change.

For example, the order would require White House economists to recalculate a budgeting metric known as the social cost of carbon that, under the Obama administration, limited pollution by arguing that global warming outweighed economic benefits for industries. It would also eliminate a requirement that federal agencies consider the impact on climate change when analyzing all future environmental permits.

Combined, the measures are likely to ensure the United States' emissions of planet-warming pollution remain too high to meet the terms of the Paris climate accord.

The aim of the Paris deal is to reduce emissions enough to stave off a warming of the planet by more than 3.6 degrees Fahrenheit, the level at which, experts say, the Earth will be irrevocably locked into a future of extreme droughts, flooding and shortages of food and water.

But analysts say Mr. Trump's order signals that the United States will not meet its pledges under the Paris deal to cut its emissions about 26 percent from 2005 levels by 2025.

"Meeting the U.S. terms of the Paris Agreement would require full enforcement of the current regulations, plus additional regulations," said Michael Oppenheimer, a climate scientist at Princeton University. "It takes a comprehensive effort involving every country doing what they committed to and more."

He said Mr. Trump's order "sends a signal to other countries that they might not have to meet their commitments — which would mean that the world would fail to stay out of the climate danger zone."

AP
http://hosted.ap.org/dynamic/stories/U/US_TRUMP_CLIMATE_PLAN?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2017-03-28-08-51-48
Trump puts anti-global warming projects on chopping block
By Matthew Daly and Jill Colvin 3/28/17 2:58PM

WASHINGTON (AP) -- Declaring "the start of a new era" in energy production, President Donald Trump signed an executive order Tuesday that he said would revive the coal industry and create jobs.

The move makes good on his campaign pledge to unravel former President Barack Obama's plan to curb global warming. The order seeks to suspend, rescind or flag for review more than a half-dozen measures in an effort to boost domestic energy production in the form of fossil fuels.

Environmental activists, including former Vice President Al Gore, denounced the plan. But Trump said the effort would allow workers to "succeed on a level playing field for the first time in a long time."

"That is what this is all about: bringing back our jobs, bringing back our dreams and making America wealthy again," Trump said, during a ceremony at the Environmental Protection Agency headquarters, attended by a number of coal miners.

The order initiates a review of the Clean Power Plan, which restricts greenhouse gas emissions at coal-fired power plants. The regulation, which was the former president's signature effort to curb carbon emissions, has been the subject of long-running legal challenges by Republican-led states and those who profit from burning oil, coal and gas.

But just as Obama's climate efforts were often stymied by legal challenges, environmental groups are promising to fight Trump's pro-fossil fuel agenda in court.

Trump has called global warming a "hoax" invented by the Chinese, and has repeatedly criticized the power-plant rule as an attack on American workers and the struggling U.S. coal industry.

In addition to pulling back from the Clean Power Plan, the administration will also lift a 14-month-old moratorium on new coal leases on federal lands.

The Obama administration had imposed a three-year moratorium on new federal coal leases in January 2016, arguing that the $1 billion-a-year program must be modernized to ensure a fair financial return to taxpayers and address climate change.

Trump accused his predecessor of waging a "war on coal" and boasted in a speech to Congress that he has made "a historic effort to massively reduce job-crushing regulations," including some that threaten "the future and livelihoods of our great coal miners."

The order will also chip away at other regulations, including scrapping language on the "social cost" of greenhouse gases. It will initiate a review of efforts to reduce the emission of methane in oil and natural gas production as well as a Bureau of Land Management hydraulic fracturing rule, to determine whether those reflect the president's policy priorities.

It will also rescind Obama-era executive orders and memoranda, including one that addressed climate change and national security and one that sought to prepare the country for the impacts of climate change.

The administration is still in discussion about whether it intends to withdraw from the Paris Agreement on climate change.

Trump's order could make it more difficult, though not impossible, for the U.S. to achieve its carbon reduction goals. The president's promises to boost coal jobs run counter to market forces, such as U.S. utilities converting coal-fired power plants to cheaper, cleaner-burning natural gas.

Trump's Environmental Protection Agency chief, Scott Pruitt, alarmed environmental groups and scientists earlier this month when he said he does not believe carbon dioxide is a primary contributor to global warming. The statement is at odds with mainstream scientific consensus and Pruitt's own agency.

The overwhelming majority of peer-reviewed studies and climate scientists agree the planet is warming, mostly due to man-made sources, including carbon dioxide, methane, halocarbons and nitrogen oxide.

Opponents say Obama's effort would have killed coal-mining jobs and driven up electricity costs. The Obama administration, some Democratic-led states and environmental groups counter that it would spur thousands of clean-energy jobs and help the U.S. meet ambitious goals to reduce carbon pollution set by the international agreement signed in Paris.

Trump's order on coal-fired power plants follows an executive order he signed last month mandating a review of an Obama-era rule aimed at protecting small streams and wetlands from development and pollution. The order instructs the EPA and Army Corps of Engineers to review a rule that redefined "waters of the United States" protected under the Clean Water Act to include smaller creeks and wetlands.

While Republicans have blamed Obama-era environmental regulations for the loss of coal jobs, federal data shows that U.S. mines have been shedding jobs for decades under presidents from both parties as a result of increasing automation and competition from natural gas, which has become more abundant through hydraulic fracturing. Another factor is the plummeting cost of solar panels and wind turbines, which now can produce emissions-free electricity cheaper than burning coal.

According to an Energy Department analysis released in January, coal mining now accounts for fewer than 75,000 U.S. jobs. By contrast, renewable energy - including wind, solar and biofuels - now accounts for more than 650,000 U.S. jobs.

The Trump administration's plans drew praise from business groups and condemnation from environmental groups.

U.S. Chamber of Commerce President Thomas J. Donohue praised the president for taking "bold steps to make regulatory relief and energy security a top priority."

"These executive actions are a welcome departure from the previous administration's strategy of making energy more expensive through costly, job-killing regulations that choked our economy," he said.

Former Vice President Al Gore blasted the order as "a misguided step away from a sustainable, carbon-free future for ourselves and generations to come."

"It is essential, not only to our planet, but also to our economic future, that the United States continues to serve as a global leader in solving the climate crisis by transitioning to clean energy, a transition that will continue to gain speed due to the increasing competiveness of solar and wind," he said in a statement.

Reuters
http://www.reuters.com/article/us-usa-trump-energy-idUSKBN16Z1L6
Trump signs order sweeping away Obama-era climate policies
By Valerie Volcovici and Jeff Mason 3/28/17, 2:48PM

U.S. President Donald Trump signed an executive order on Tuesday to undo a slew of Obama-era climate change regulations that his administration says is hobbling oil drillers and coal miners, a move environmental groups have vowed to take to court.

The decree's main target is former President Barack Obama's Clean Power Plan that required states to slash carbon emissions from power plants - a critical element in helping the United States meet its commitments to a global climate change accord reached by nearly 200 countries in Paris in 2015.

The so-called "Energy Independence" order also reverses a ban on coal leasing on federal lands, undoes rules to curb methane emissions from oil and gas production, and reduces the weight of climate change and carbon emissions in policy and infrastructure permitting decisions.

"I am taking historic steps to lift restrictions on American energy, to reverse government intrusion, and to cancel job-killing regulations," Trump said at the Environmental Protection Agency headquarters, speaking on a stage lined with coal miners.

The wide-ranging order is the boldest yet in Trump's broader push to cut environmental regulation to revive the drilling and mining industries, a promise he made repeatedly during the presidential campaign. But energy analysts and executives have questioned whether the moves will have a big effect on their industries, and environmentalists have called them reckless.

"I cannot tell you how many jobs the executive order is going to create but I can tell you that it provides confidence in this administration's commitment to the coal industry," Kentucky Coal Association president Tyler White told Reuters. Trump signed the order with EPA Administrator Scott Pruitt, Interior Secretary Ryan Zinke, Energy Secretary Rick Perry and Vice President Mike Pence by his side.

U.S. presidents have aimed to reduce U.S. dependence on foreign oil since the Arab oil embargo of the 1970s, which triggered soaring prices. But the United States still imports about 7.9 million barrels of crude oil a day, almost enough meet total oil demand in Japan and India combined.

While Trump's administration has said reducing environmental regulation will create jobs, some green groups have countered that rules supporting clean energy have done the same.

The number of jobs in the U.S. wind power industry rose 32 percent last year while solar power jobs rose by 25 percent, according to a Department of Energy study.

'ASSAULT ON AMERICAN VALUES'

Environmental groups hurled scorn on Trump's order, arguing it is dangerous and goes against the broader global trend toward cleaner energy technologies.

"These actions are an assault on American values and they endanger the health, safety and prosperity of every American," said billionaire environmental activist Tom Steyer, the head of activist group NextGen Climate.

Green group Earthjustice was one of many organizations that said it will fight the order both in and out of court. "This order ignores the law and scientific reality," said its president, Trip Van Noppen.

An overwhelming majority of scientists believe that human use of oil and coal for energy is a main driver of climate change, causing a damaging rise in sea levels, droughts, and more frequent violent storms.

But Trump and several members of his administration have doubts about climate change, and Trump promised during his campaign to pull the United States out of the Paris climate accord, arguing it would hurt U.S. business.

Since being elected Trump has been mum on the Paris deal and the executive order does not address it.

Christiana Figueres, former executive secretary of the United Nations Framework Convention on Climate Change who helped broker the Paris accord, lamented Trump's order.

"Trying to make fossil fuels remain competitive in the face of a booming clean renewable power sector, with the clean air and plentiful jobs it continues to generate, is going against the flow of economics," she said.

The order will direct the EPA to start a formal "review" process to undo the Clean Power Plan, which was introduced by Obama in 2014 but was never implemented in part because of legal challenges brought by Republican-controlled states. The Clean Power Plan required states to collectively cut carbon emissions from power plants by 32 percent below 2005 levels by 2030.

Some 85 percent of U.S. states are on track to meet the targets despite the fact the rule has not been implemented, according to Bill Becker, director of the National Association of Clean Air Agencies, a group of state and local air pollution control agencies.

Trump's order also lifts the Interior Department's Bureau of Land Management's temporary ban on coal leasing on federal property put in place by Obama in 2016 as part of a review to study the program's impact on climate change and ensure royalty revenues were fair to taxpayers.

It also asks federal agencies to discount the cost of carbon in policy decisions and the weight of climate change considerations in infrastructure permitting, and reverses rules limiting methane leakage from oil and gas facilities.

Bloomberg
https://www.bloomberg.com/politics/articles/2017-03-28/trump-to-cancel-obama-s-policies-aimed-at-paris-climate-pledge
Trump Sweeps Away Climate Rules Vowing 'New Energy Revolution'
By Jennifer A Dlouhy 3/28/17 2:58PM

President Donald Trump moved aggressively to undo his predecessor's carbon-cutting commitments, promising "a new energy revolution" that would unleash America's abundant fossil-fuel resources.

Flanked by coal miners, Trump signed an executive order Tuesday that begins unraveling a raft of rules and directives to combat climate change, which President Barack Obama wove into the fabric of the federal government as he made addressing the issue a centerpiece of his second term.

"My administration is putting an end to the war on coal," Trump said, highlighting the coming rollback of Obama's Clean Power Plan, a rule that discouraged utilities from using the fossil fuel to generate electricity. "Perhaps no single regulation threatens our miners, energy workers and companies more than this crushing attack on American industry."

Trump, who once called climate change a hoax, has vowed to reorient the federal government so that U.S. oil and coal producers thrive, while manufacturers aren't burdened by "job-killing" restrictions -- a commitment he reiterated Tuesday at the Environmental Protection Agency. The U.S. is "ending the theft of American prosperity," he said.

He stopped short of withdrawing the U.S. from the landmark Paris accord on climate change negotiated by his predecessor. Aides say that is still being discussed, even as the steps he took would make it hard for the nation to keep its commitment.

Some changes will happen immediately, such as the repeal of a 2016 policy that encouraged federal regulators to consider climate change in environmental reviews as well as directives from Obama that compelled government agencies and the military to factor the phenomenon into their planning. The Interior Department also will swiftly rescind a moratorium on the sale of new rights to extract coal on federal land.

And the Trump administration also is tossing an Obama-era "social cost of carbon" metric that estimated the potential economic damage from climate change and was used to justify a slew of environmental actions, from efficiency standards for microwave ovens to the revamp of government buildings. Instead, the government will return to an earlier 2003 approach for estimating the potential costs of any regulations governing greenhouse gas emissions.

Other policy pivots will take years of work, such as reversing the Clean Power Plan that forced states to cut greenhouse gas emissions from electricity. An Interior Department rule setting requirements for hydraulic fracturing on federal land will be rescinded. And a pair of regulations governing potent methane emissions from oil and gas wells also will be reviewed at the Environmental Protection Agency and the Interior Department -- with possible changes or a reversal years away.

Most -- if not all -- of the changes will face legal challenges from the same environmentalists who already are fighting to defend Obama's Clean Power Plan in federal court.

"In taking a sledgehammer to U.S. climate action, the administration will push the country backward, making it harder and more expensive to reduce emissions," Andrew Steer, president of the World Resources Institute, said in an emailed statement. "Climate science is clear and unwavering: mounting greenhouse gas emissions are warming our planet, putting people and business in harm's way."

Agencies will have to justify their regulatory reversals and submit the proposed changes to public comment. And saying climate change isn't real won't cut it, said Gina McCarthy, the former EPA administrator who drove many of the mandates now on the chopping block.

"They are going to have to figure out a lot better argument than that," McCarthy said in a phone interview.

Unwinding some mandates will be tougher than others, notes Victor Flatt, co-director of the Center for Climate, Energy, Environment and Economics at the University of North Carolina School of Law.

"According to the Supreme Court, all actions by federal agencies, including rulemakings, must be made on the basis of evidence, and may not be arbitrary and capricious or an abuse of discretion," Flatt said by email.

"Having established a deep base of evidence in support of these rules, the EPA can't simply say it changed its mind. It'll need new evidence, new analysis, new public comments, a new cost-benefit analysis, and in all likelihood, new litigation."

Trump's order was cheered by some conservatives who have been pushing the president to go even further in stripping climate regulations from the rulebooks, including by undoing the EPA's landmark declaration that greenhouse gas emissions jeopardize the public health and welfare. That 2009 endangerment finding served as the underpinning for later EPA carbon rules.

Myron Ebell, director of the Competitive Enterprise Institute's Center for Energy and Environment, cast Trump's executive order as a good start.

"It takes the necessary first steps in undoing President Obama's energy-rationing agenda," Ebell said by email. "Of course, there is more work to be done down the road, most importantly withdrawing from the Paris climate treaty and reopening the endangerment finding."

The Trump administration hasn't said if the U.S. will remain a part of that 2015 Paris climate accord -- despite the president's campaign pledges to rip up the deal that set broad, non-binding carbon-cutting targets for the U.S. and nearly 200 other countries.

Secretary Tillerson

Secretary of State Rex Tillerson has advocated the U.S. keep its seat at the table by sticking with the plan. Even without formally pulling out of the Paris pact, the U.S. is abandoning its pledge to pay $3 billion into a United Nations fund to help countries on the front lines of climate change.
Trump's actions are politically significant, following months of promises to reverse the fortunes of struggling coal miners -- campaign vows that helped propel him to victory in industrial strongholds like West Virginia and Pennsylvania. Although the changes he is setting in motion will make it cheaper to extract coal and use it to generate electricity, they are unlikely to dramatically boost domestic demand for coal, which faces stiff competition from cheap natural gas and is affected by other pollution regulations untouched by Trump's order.

And mining jobs have been in decline for decades as automated equipment increasingly unearths coal, doing the work that once required pick axes and mules.

Even before the Obama administration imposed the coal-leasing moratorium in January 2016, coal producers had little interest in adding new federal reserves to their portfolios, amid slumping domestic demand. Existing federal leases contain at least 20 years' worth of coal, according to Interior Department estimates.

It was not immediately clear Monday whether Trump's Interior Department would continue a broad review of the federal coal leasing program even as it restarts sales; that analysis is already about a third complete, with regulators unveiling a broad blueprint of possible changes earlier this year.

Sierra Club Executive Director Michael Brune called Trump's order "the single biggest attack on climate action in U.S. history" and said it was a misguided attempt to help workers displaced by the global shift to cleaner energy sources.

"The best way to protect workers and the environment is to invest in growing the clean energy economy that is already outpacing fossil fuels and ensuring no one is left behind," Brune said in an emailed statement. "At a time when we can declare independence from dirty fuels by embracing clean energy, this action could only deepen our dependence on fuels that pollute our air, water and climate while making our kids sicker."

Legal Limbo

The EPA's Clean Power Plan was already in legal limbo, having been put on hold by the Supreme Court in February 2016, while lower court proceedings were underway. The U.S. Court of Appeals heard arguments on the challenge last September but has not ruled on the case that the Trump administration will now seek to put on hold. Environmental groups and states that support the rule and are defending it in court have vowed to fight to keep those proceedings going.

Janet McCabe, the former head of the EPA Office of Air and Radiation that helped develop the Clean Power Plan, defended the measure as a "solid, reasonable and flexible rule based on years of research and outreach that follows" an ongoing market transition toward cleaner energy. "EPA has an obligation to address carbon pollution," she said in an emailed statement. "Congress put the Clean Air Act in place to protect Americans from air pollution, and there is no doubt greenhouse gases are air pollution; the science makes that crystal clear."

Critics of the initiative said the EPA went beyond its authority under the Clean Air Act by imposing broad statewide emissions targets, rather than specific mandates for individual power plants.

"The Clean Power plan was an unprecedented power grab by the previous administration that was built on a shaky legal foundation," said Thomas Pyle, head of the American Energy Alliance, a fossil fuel-oriented free market advocacy group. "This executive order won't get rid of the regulation overnight, but it's an important first step that reaffirms President Trump's commitment to protecting American families from higher energy costs."

Politico
http://www.politico.com/story/2017/03/donald-trump-climate-change-executive-order-236597
Trump signs order to unwind Obama's climate actions
By Politico Staff 3/28/17, 2:33PM

President Donald Trump on Tuesday signed an executive order that represents his biggest effort yet to erase former President Barack Obama's legacy on climate change.
The order directs EPA to begin rolling back the Clean Power Plan, the landmark 2015 rule requiring existing power plants to curb their greenhouse gas emissions.

Also on the chopping block are a year-old coal leasing moratorium, regulations on methane emissions and fracking, White House guidance on incorporating climate change into federal projects and the "social cost of carbon," a dollar amount of damage estimated for carbon dioxide emissions.

The Hill
http://thehill.com/policy/energy-environment/326124-trump-signs-order-to-roll-back-obamas-climate-moves
Trump signs order to roll Obama's climate moves
By Timothy Cama 3/28/17, 2:28PM

President Trump on Tuesday signed a wide-ranging executive order to start the process of rolling back former President Obama's aggressive climate change agenda, promising that the measure would create jobs in the fossil fuel industry.

Trump signed the order in a ceremony at the headquarters of the Environmental Protection Agency (EPA), the agency responsible for many of the major policies being targeted.

He was flanked by coal miners — whom EPA Administrator Scott Pruitt joked "might never have been to the EPA before" — as well as cabinet officials and Vice President Mike Pence, who celebrated the executive order as a repudiation of the Obama administration's climate agenda.

"My administration is putting an end to the war on coal," Trump said, using a term coined by the industry and its supporters to describe government regulations.

"I am taking an historic step to lift the restrictions on American energy, to reverse government intrusion and to cancel job-killing regulations."

The administration is pitching the order primarily as a move to increase the nation's energy independence, with the added effect of increasing jobs in affected sectors and related industries.

Trump said the order fulfills a promise made to coal miners during his presidential campaign. He recounted a trip to West Virginia when he met with miners who told him they wanted to continue working in the industry despite a downturn in employment.

"I said, if that's what you want to do, that's what you're doing to do," Trump said.

"The miners told me about the attacks on their jobs and their livelihoods. ... I made them this promise: we will put our miners back to work."

Experts and environmental groups challenge the assertion that rolling back Obama's policies would benefit energy independence or jobs.

"Right now, clean energy jobs already overwhelm dirty fuels in nearly every state across America, and that growth is only going to continue as clean energy keeps getting more affordable and accessible by the day," Sierra Club Executive Director Michael Brune said in a statement.

"These facts make it clear that Donald Trump is attacking clean energy jobs purely in order to boost the profits of fossil fuel billionaires."

The most significant piece of the order instructs the EPA to formally consider repealing the Clean Power Plan. It was the central piece of Obama's second-term climate agenda, setting a 32 percent cut in the power sector's carbon dioxide emissions by 2030.

Federal regulators are also asked under the order to consider repealing the EPA's carbon limits for newly built power plants and methane emissions standards for oil and natural gas drilling from the EPA and the Interior Department.

It also has some immediate effects. The order stops Interior's moratorium on new coal-mining leases on federal land, something Obama instituted to study how to charge coal companies for the climate impacts of the fuel they mine on federal property.

It also stops policies asking federal agencies to consider climate change in environmental reviews, a government-wide accounting method for climate change regulations called the "social cost of carbon" and Obama executive orders on climate, like one asking that infrastructure be built to withstand a future climate affected by global warming.

Fossil fuel industries stand to benefit from the order, and many voiced their support for the measure this week.

Oil and natural gas groups, for instance, have fought back against the methane rules in court and in Congress.

But Trump and his administration have had a special affinity for the coal industry. The sector is suffering through an economic downturn due in large part to declining demand for its product, which is increasingly being replaced by cheaper and more plentiful natural gas.

Trump framed his order Tuesday as a measure to help put coal miners back to work, a promise repeated this week by administration officials like Pruitt and Interior Secretary Ryan Zinke.

"You know what this says?" Trump asked a miner before he signed the order on Tuesday. "You're going back to work."

E&E News
http://www.eenews.net/greenwire/2017/03/28/stories/1060052208
White House outlines more cuts for energy, environment
By George Cahlink 3/28/17

The White House is asking Congress to slash billions of dollars from energy and environmental programs for the last six months of fiscal 2017, beyond the already deep cuts it previously proposed for next year.

According to budget documents obtained by E&E News, the Trump administration is proposing that $1.75 billion be cut from the Energy and Water Development appropriations bill and $714 million be carved from the Interior and Environment spending measure.

Specifically, the administration would cut the Department of Energy by $1.43 billion, U.S. EPA by $247 million, the Interior Department by $371 million and the National Oceanic and Atmospheric Administration by $300 million.

The administration sent the proposals to Capitol Hill on Friday as lawmakers and the White House prepare for grinding talks over spending for the last half of fiscal 2017. A stopgap funding measure, known as a continuing resolution, expires April 28, and Congress will need to put a new spending plan in place by then or face a politically treacherous government shutdown.

The White House earlier this month said it wanted $18 billion in domestic spending cuts for fiscal 2017 to help fund a $33 billion hike in supplemental defense spending for the final six months of the year. Documents circulated this week mark the first time the administration has offered details on where those supplemental cuts would be taken, the bulk of them — about $7.25 billion — coming from the Labor, Health and Human Services, and Education spending bill.

Lawmakers are unlikely to welcome the domestic cuts that many in both parties have said are not the way to pay for Pentagon increases. Several appropriators said they would prefer the defense hike be counted as emergency spending so it would not require offsetting cuts.

House Minority Whip Steny Hoyer (D-Md.) told reporters today that proposing additional cuts to energy and environmental programs across government is a "non-starter" for the supplemental spending measure. He said Congress should stick to the two-year budget agreement passed in 2015 that sets spending caps for fiscal 2016 and 2017.
"The 'art of the deal' is keeping the deal," he said.

A Senate appropriations aide stressed the reductions were not being floated by Senate Republicans.

The proposed cuts to energy and environmental programs target efforts that President Trump has already said would be or are expected to be cut in fiscal 2018. The full budget proposal for next year is due in May.

Chopping block

Under the proposal for the rest of fiscal 2017, DOE's renewable energy and energy efficiency efforts would face the budget ax.

The administration wants to cut about 25 percent ($516 million) from the $2 billion energy efficiency and renewable energy program by decreasing grants and rescinding unobligated spending. The Advanced Research Projects Agency-Energy budget, where the department has focused on commercializing clean energy technologies, would be reduced by more than 50 percent ($150 million) from $290 million.

Fossil fuel research programs would also take a more than 50 percent hit ($341 million) from current spending of $631 million for the rest of the year. The savings would come largely by cutting research grants.

At EPA, state environmental grant programs would be cut by about 10 percent ($115 million) from $1.079 billion. The White House notes that the reduction would help the agency ease into far larger reductions of about 44 percent for those grant programs it is seeking for fiscal 2018.

Also marked for cuts would be EPA research and development programs by about 10 percent ($48 million) from $483 million. Documents say the money would come out of climate research programs and grants.

At Interior, the single largest savings would come from tapping $230 million in proceeds in the department's Southern Nevada Public Land Management account, which collects fees from public lands sales around Las Vegas. Other reductions would hit the Abandoned Mine Land Reclamation Program ($90 million) and the payment-in-lieu-of-taxes program ($51 million).

For the National Oceanic and Atmospheric Administration, the proposal would cut funding for the National Sea Grant College Program by $30 million, from its current budget of $73 million. The administration wants to completely eliminate it in fiscal 2018. The program supports research at 33 universities and is popular among both Republicans and Democrats, but the administration calls it a "lower priority research grant program that primarily benefits industry and state and local stakeholders."

Trump is also asking Congress to eliminate funding for the Pacific Coastal Salmon Recovery Fund, noting that it has collected $1 billion since 2000. NOAA has repeatedly — and unsuccessfully — tried to decrease the program's funding. Congress reliably funds it anyway, at $65 million annually.

The Trump administration's proposed cuts would represent a double hit for the agencies.
The reductions would come from current, fiscal 2017 spending, which is mostly based on fiscal 2016 levels since the government has been operating under a CR. In many cases, the current spending is lower than what agencies had sought in their fiscal 2017 budget requests.

E&E News
http://www.eenews.net/greenwire/2017/03/28/stories/1060052207
Greens search for silver linings in executive action
By Hannah Hess 3/28/17

On an otherwise dismal day for environmentalists, supporters of climate action see some silver linings for the power sector.
The centerpiece of President Trump's new energy directive, ordering U.S. EPA to review the Clean Power Plan, does not undo the Obama administration's groundwork in the effort to cut greenhouse gas emissions.

The unprecedented amount of planning, analysis and engagement that the agency conducted ahead of its rules on new and existing power plants provide a path forward for utilities and regional authorities to advance the dialogue on climate issues.

Increased energy efficiency, more renewable energy and conversations among stakeholders about how to rein in emissions can still happen — and may even be easier with the Clean Power Plan gone, said Vicki Arroyo, executive director of the Georgetown Climate Center.

"Not that I want to laud the demise of the Clean Power Plan after so many have done so much to try to bring it about, but I do think that, at least in a handful of states, it might be a bit easier for people to have these conversations without some of the partisanship and polarization we saw around the Clean Power Plan," Arroyo said at a recent forum on climate action.

Bill Becker, executive director of the National Association of Clean Air Agencies, noted that 75 percent of the states are already meeting their 2022 interim greenhouse gas targets under the Clean Power Plan, 20 percent of the states are meeting their 2030 final targets, and 85 percent of the states are on track to meet their final 2030 targets.

"The CPP lays the groundwork for ... integration of state air quality, energy and utility planning, and expanded dialogue among states and between regions of the country," Becker said today. "If the Trump executive order prevails, the CPP will, nonetheless, leave a legacy in the form of a substantial impact on states' actions to address the challenges of climate change."

Sizing up coal's role

Ahead of Trump's trip to U.S. EPA headquarters this afternoon, mining officials and oil and gas industry groups welcomed his plan to wipe out many of the Obama administration's executive orders dealing with climate change and its coal-leasing moratorium on public lands (*Greenwire*, March 27).

Hal Quinn, the National Mining Association's president and CEO, praised the action and called the Clean Power Plan "an unlawful attempt to radically transform the nation's power grid, destroying valuable energy assets and leaving our economy more vulnerable to rising power prices — all for no discernible environmental benefit."

Senate Majority Leader Mitch McConnell (R-Ky.) said Trump's action would be good news for coal communities, calling it a "victory" for middle-class families and "another important step away from the overregulation of the Obama years." McConnell also urged EPA to work with stakeholders.

American Petroleum Institute President and CEO Jack Gerard also called the executive order an "important step." Gerard said API anticipates working with the administration and Congress on "forward-looking energy policies" that help maintain U.S. leadership in the production and refining of oil and natural gas and the reduction of carbon emissions. Scott Segal, an industry lawyer at Bracewell LLP, said the executive order "can remove the shadow of a regulatory straitjacket" and replace it with market principles that would perhaps help the coal industry.

"If going-forward policy makes more accurate technological assumptions, removes clear obstacles like leasing moratoriums, and seizes the opportunity to clarify Clean Air Act applicability to efficiency improvement, coal can be advantaged by the executive order and subsequent actions," Segal said in an email.

First move of 'long chess game'

Richard Revesz, director of the Institute for Policy Integrity at the New York University School of Law, argued that the executive order has no legal significance at all when it comes to the Clean Power Plan, due to the drawn-out nature of the rulemaking process.
"This is the first move of a long chess game that will take years to unfold, and future moves will be far more challenging," Revesz said.

EPA will need to initiate a notice-and-comment rulemaking process that has many significant built-in hurdles, and when the agency promulgates its final rule, it will need to respond to potentially millions of comments.

"Then, the litigation will start, first in the D.C. Circuit and then, perhaps, in the Supreme Court. This issue might not be resolved before the 2020 election, so the fate of the Clean Power Plan might ultimately be determined by the winner of that election," Revesz said.
Environmentalists have planned an "emergency rally" this evening at Lafayette Square in front of the White House to advocate for the Clean Power Plan. Mustafa Ali, who recently left his post as EPA's assistant associate administrator for environmental justice to join the Hip Hop Caucus, will attend, along with NextGen Climate President Tom Steyer.

Another silver lining for climate action: The order is mum on whether the United States should withdraw from the Paris Agreement, under which it has pledged to cut its greenhouse gas emissions between 26 and 28 percent by 2025 compared to 2005 levels. Trump advisers are still divided on whether to withdraw (*see related story*).

"You can't just stay in the Paris Agreement, then do nothing — it requires some action," said Jon Sohn, an attorney with multinational law firm Dentons. "This would have been the ideal moment to include something about Paris, and they didn't."

By staying in the agreement, the United States would still be required to submit future targets for cutting greenhouse gas emissions and contribute to international climate finance, Sohn said.

Countries agreed at Paris to come back in 2018 to take stock of initial progress toward their collective goal and to inform new or updated targets that would be put forward by 2020. After 2020, this will be followed by "global stocktakes" every five years starting in 2023, Sohn said.

Huffington Post
http://www.huffingtonpost.com/entry/trump-climate-order_us_559aab91e4b0c706985a42be
Donald Trump's Disastrous Plan To Derail U.S. Climate Action
By Alissa Scheller and Alexander Kaufman 3/28/17, 2:35PM

President Donald Trump signed a sweeping executive order on Tuesday aimed at reversing much of former President Barack Obama's efforts to shrink the United States' carbon footprint.

The long-awaited order instructs the Environmental Protection Agency to review the Clean Power Plan, the Obama administration's signature policy for slashing greenhouse gas emissions from the utility sector, by far the country's biggest emitter. This review marks the first step toward scrapping the regulation.

"Perhaps no single regulation threatens our miners, energy workers and companies more than this crushing attack on American industry," Trump said at the 2 p.m. signing at the EPA. "We're ending the theft of American prosperity and rebuilding our beloved country."

Trump's order also directs the Department of the Interior to lift a temporary ban, put in place last year, on coal leasing on federal lands. In addition, it eliminates federal guidance instructing agencies to factor climate change into policymaking and disbands a team tasked with calculating the "social cost of carbon."
By undoing the Clean Power Plan, the Trump administration is putting projected carbon emissions back on an upward trajectory. It is also abandoning any hope of meeting the U.S. emissions reduction targets set out in 2015 in the 195-country Paris Agreement, the first global climate pact to include China and the U.S., the world's top polluters.

China ratified the Paris climate deal in September. In January, Chinese President Xi Jinping urged the U.S. not to withdraw from the agreement. Trump's executive order does not contain language critical of the Paris accord, reflecting pressure from Trump's few advisers who don't take a hard-line stance against climate science.

To be sure, the Trump administration can't just get rid of the Clean Power Plan outright. In his previous role as Oklahoma's attorney general, EPA chief Scott Pruitt sued the Obama administration to block the plan, claiming the rule overstepped the EPA's legal mandate.

In a victory for Pruitt and other Republican state attorneys general, the Supreme Court issued a stay on implementing the plan in February 2016. But the high court's 2007 ruling in Massachusetts v. EPA, which categorized greenhouse gases as a pollutant, legally compels the federal environmental agency to police emissions.

"It looks like there's going to be a reopening of the whole question of the best way, the legal way, to get at the largest source of greenhouse gas pollution in our country, which is the fossil fuel-fired power plants," Frank Rambo, head of

clean energy and air pollution at the nonprofit Southern Environmental Law Center, told The Huffington Post in an interview ahead of the order's release.

Environmentalists are likely to sue to protect the Clean Power Plan, forcing the White House to prove in court that the regulation meets the legal standard of "arbitrary and capricious." To successfully employ this standard to overturn a previous court ruling, White House attorneys would have to debunk the overwhelming scientific consensus that global warming is man-made.

The biggest problem with dismantling the Clean Power Plan is that the plan itself represents only a preliminary step toward reaching emissions reduction goals. Even if the plan were to be perfectly implemented, the U.S. would still be progressing only halfway toward achieving its emissions goals for 2025. Trump may fail to completely undo the plan, but his administration seems unlikely to enact other policies to reduce emissions.

Trump pledged to boost the U.S. economy by gutting environmental regulations he blames for holding back businesses. Earlier this month, he proposed slashing the EPA budget by nearly one-third, eliminating popular programs like Energy Star and hampering the agency's enforcement division. The EPA already rescinded a rule this month requiring oil and gas drillers to report leaks of methane, a greenhouse gas 40 times more potent than carbon dioxide.

Kneecapping U.S. participation in the Paris Agreement could jeopardize the future of the deal itself. The accord, signed in December 2015, set out global emissions targets far below what's required to prevent world temperatures from surpassing the 3.6-degree Fahrenheit increase that scientists say will irreversibly damage human civilization.

The language of the Paris deal urges the United Nations to reconvene every five years to set new, more stringent goals. If a country as wealthy and powerful as the U.S. fails to meet its baseline commitments, it's unlikely that poor, developing countries that depend on fossil fuels to grow their economies will make ambitious emissions cuts themselves.

The failure of previous global deals, such as the 1992 Kyoto Protocol, hinged in large part on the U.S.'s refusal to implement emission cuts. And already, Trump has proposed curtailing payments to the U.N.-administered Green Climate Fund, which helps poorer countries build renewable energy infrastructure and prepare for the effects of climate change.

"The world is safer when America is strong," Interior Secretary Ryan Zinke said in a speech before Trump. "Our strength relies on energy."

USA Today
http://www.usatoday.com/story/news/politics/2017/03/28/energy-independence-not-climate-change-becomes-priority-under-trump-order/99725640/
Energy independence, not climate change, becomes priority under Trump order
By Gregory Korte 3/28/17, 2:20PM

WASHINGTON — President Trump's executive order on American energy independence is a sweeping repudiation of Obama-era environmental initiatives, substituting a strategy of combating climate change through international cooperation for an America-first energy policy.

Trump proclaimed the order as "the start of a new era of American energy production" that would "restore economic freedom and allow our workers to thrive compete and succeed on a level playing field for the first time in a long time."

Trump spoke at a signing ceremony at the Environmental Protection Agency Tuesday on a stage with a dozen coal miners.

Trump's order attempts to roll back Obama-era policies on power plant emissions limits, coal mining on federal lands, and regulations on fracking and methane. Because most of those rules were finalized under Obama, the Trump would have to start from the beginning on a rulemaking process to dismantle those regulations.

Even further, the order also takes aim at the entire framework of climate change action under the previous administration. Under Obama, federal agencies were required to plan for and mitigate the future effects of climate change, treat it as a national security issue, and attempt to reduce their own greenhouse gas emissions by 40%. All of those policies are rescinded by Trump's order.

Environmental activists deplored the order. Annie Leonard of Greenpeace USA said it showed Trump is "just a fossil fuel industry stooge with a presidential pen."

But she also cast the executive order as a temporary setback. "Thankfully, for all his bluster, the best Trump can do is delay America's inevitable transition to clean energy, but he can't stop it," she said.

White House officials said Trump's action "will look back and it will look forward," providing the framework for a new Trump-era energy framework that will emphasize more production and more jobs.

And despite relaxing environmental standards, the White House argues that its energy policies can be good for the environement in the long term. "The president strongly believes that protecting the environment and promoting our economy are not mutually exclusive goals," press secretary Sean Spicer said Tuesday. "This executive order will help to ensure that we have clean air and clean water without sacrificing economic growth and job creation."

The order will ask all federal agencies to identify obstacles to domestic energy production, with a report back to the White House for future action. And Trump said the order is "returning power to the states, where that power belongs."

The order makes good on Trump's promise to end what he called a "war on coal," and to bring back coal jobs. "I made them this promise. We will put our miners back to work," Trump said Tuesday.

"The war on coal is over," said Vice President Mike Pence at an executive order signing ceremony Tuesday, flanked by Secretary of Energy Rick Perry, Interior Secretary Ryan Zinke and EPA Administrator Scott Pruitt.

Former vice president Al Gore called the order "a misguided step away from a sustainable, carbon-free future for ourselves and generations to come."

"No one man or group can stop the encouraging and escalating momentum we are experiencing in the fight to protect our planet," Gore said.

CNN
http://www.cnn.com/2017/03/27/politics/trump-climate-change-executive-order/
Trump dramatically changes US approach to climate change
By Dan Merica 3/28/17

Washington (CNN) President Donald Trump signed a sweeping executive order Tuesday at the Environmental Protection Agency, which officials said looks to curb the federal government's enforcement of climate regulations by putting American jobs above addressing climate change.

The order represents a clear difference between how Trump and former President Barack Obama view the role the United States plays in combating climate change, and dramatically alters the government's approach to rising sea levels and temperatures -- two impacts of climate change.

Trump said during the signing that the order will "eliminate federal overreach" and "start a new era of production and job creation."

"My action today is latest in steps to grow American jobs," Trump added, saying his order is "ending the theft of prosperity."

A White House official briefed on the plan said Monday the administration believes the government can both "serve the environment and increase energy independence at the same time" by urging the EPA for focus on what the administration believes is its core mission: Clean air and clean water.

More important than regulating climate change, the official said, is protecting American jobs.

"It is an issue that deserves attention," the official said of climate change. "But I think the President has been very clear that he is not going to pursue climate change policies that put the US economy at risk. It is very simple."

Tuesday's order initiates a review of the Clean Power Plan, rescinds the moratorium on coal mining on US federal lands and urges federal agencies to "identify all regulations, all rules, all policies ... that serve as obstacles and impediments to American energy independence," the official said.

Specifically, the order rescinds at least six Obama-era executive orders aimed at curbing climate change and regulating carbon emissions, including Obama's November 2013 executive order instructing the federal government to prepare for the impact of climate change and the September 2016 presidential memorandum that outlined the "growing threat to national security" that climate change poses.

"The previous administration devalued workers by their policies," the official said. "We are saying we can do both. We can protect the environment and provide people with work."

The White House official went on to argue that the best way to protect the environment is to have a strong economy, noting that countries like India and China do less to protect the environment.

"To the extent that the economy is strong and growing and you have prosperity, that is the best way to protect the environment," the official said.

The executive order also represents the greatest fears climate change advocates had when Trump was elected in November 2016.

"These actions are an assault on American values and they endanger the health, safety and prosperity of every American," Tom Steyer, the president of NexGen Climate, said in a statement. "Trump is deliberately destroying programs that create jobs and safeguards that protect our air and water, all for the sake of allowing corporate polluters to profit at our expense."

Andrew Steer, CEO of the World Resources Institute, said that the executive order shows Trump is "failing a test of leadership to protect Americans' health, the environment and economy."

Some environmental advocates have already said they plan to take legal action against the Trump administration.

But as much as Democrats and climate advocates will decry it, Trump's executive order follows the President's past comments about climate change. Though Trump told The New York Times during the election that he has an "open mind" about confronting climate change, he also once called it a hoax.

"The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive," Trump tweeted in November 2012.

"I will also cancel all wasteful climate change spending from Obama/Clinton," Trump said in October 2016.

On Tuesday, ahead of the signing, White House press secretary Sean Spicer declined to say whether Trump still believes climate change is a hoax.

"He does not believe ... that there is a binary choice between job creation, economic growth and caring about the environment," Spicer said. "That's what we should be focusing on."

The changes, the official said, do not mean the Trump administration will not look to protect the environment any longer, the official said, but when pressed about the human impact on climate change and Trump's beliefs, the official was reluctant to say whether all government officials in the Trump White House believe humans cause climate change.

"I think there are plenty of rules on the books already. We will continue to enforce that provide for clean air and clean water. And that is what we are going to do," the official said. "The President has been very clear that he wants the EPA to stick to that basic core mission that Congress set out for it."

The changes also reflect the view of EPA Administrator Scott Pruitt, who routinely sued the organization he now leads during his time as the Attorney General of Oklahoma. In an interview with CNBC earlier this month, Pruitt argued incorrectly that carbon dioxide isn't the "primary contributor" to climate change, a comment that goes against most scientific research.

This executive order is also an attempt by the Trump administration to make good on its promise to bring more coal jobs back. The official said that Obama's regulations "were not helpful" to the coal industry and these reversals are the President honoring "a pledge he made to the coal industry."

"We are going to put our coal miners back to work," Trump said at a March 2017 event in Kentucky. "They have not been treated well, but they're going to be treated well now."

He added: "The miners are coming back."

On Tuesday at the EPA, Trump welcomed a group of miners that attended the signing and said the order was "putting an end to the war on coal."

It is unclear whether Trump's order will actually bring back coal jobs, in part, because of market forces like the rise of clean energy that are already putting pressure on the coal industry.

Robert Murray, the CEO of Murray Energy, told CNN in January that coal employment "can't be brought back to where it was before the election of Barack Obama" because of market pressure.

Mashable
http://mashable.com/2017/03/28/trump-climate-change-rollback-order-from-epa/#j6w_RvcwPiqN
In ultimate insult, Trump to roll back EPA's climate policies from within the EPA
By Maria Gallucci 3/28/17

President Donald Trump took his first swing at the Environmental Protection Agency (EPA) when he tapped the agency's biggest opponent — a man who denies climate science — to run the show. His second hit came earlier this month when Trump proposed shrinking the EPA's budget by 31 percent.

Trump will land his third big blow on Tuesday afternoon, when he is expected to issue a sweeping executive order that will begin unraveling the Obama administration's key efforts to address climate change, including the EPA's Clean Power Plan.

Adding insult to injury, he's expected to sign the order from within the very walls of the EPA's headquarters — a move that prompted plenty of bitter eye-rolling on Twitter.

The Trump administration says the order will simply prioritize the EPA's focus on clean air and water while winding down "job-killing" policies designed to reduce emissions contributing to global warming.

A White House official briefed on the plan told CNN that Trump officials believe the government can "serve the environment and increase energy independence at the same time." Trump's supporters have said the coming changes will finally lift EPA's "strangling effect" on the economy.

But many climate and environmental experts have staunchly opposed the Trump administration's regressive vision for the 47-year-old agency. The EPA is, by definition, supposed to protect Americans from environmental harm, including the effects of human-driven climate change such as rising sea levels, more intense droughts, extreme weather events and more.

Current and former EPA employees have turned out by the hundreds to oppose Trump's attempted rollback of Obama-era policies to cut emissions from power plants, automobiles and oil and gas well sites.

The EPA's new boss, Scott Pruitt, is one of the nation's biggest champions of such reversals. As Oklahoma attorney general, he led a Republican legal battle against the Clean Power Plan, which requires states to reduce carbon emissions from power plants.

Like Trump, Pruitt has also questioned the mainstream scientific consensus that the planet is warming and that human activity is primarily to blame.

While some climate rollbacks can be changed with the stroke of a pen, others could take years to complete. The Clean Power Plan, for instance, requires at least a year of bureaucratic work to unravel, and lawsuits from environmental groups could delay the process even longer.

Still, at Trump's signing ceremony, smiles and prolonged handshakes are sure to fill the room. But down the halls of the EPA, and in many homes and offices across the U.S., the mood will grow resoundingly sour.

Gizmodo
http://gizmodo.com/trumps-drastic-move-to-dismantle-the-clean-power-plan-w-1793709534
Trump's Drastic Move to Dismantle the Clean Power Plan Won't Bring Coal Back
By Sidney Fussell 3/28/17, 11:50AM

On Tuesday, President Trump is expected to begin the process of dismantling Obama's environmental legacy, including his signature climate action policy, the Clean Power Plan. According to Reuters, Trump will sign an executive order compelling the Environmental Protection Agency to review and rewrite the plan, which calls on states to reduce carbon emissions from power plants, with an overall goal of shaving 32 percent off the power sector's greenhouse gas footprint by 2030. As Trump and EPA head Scott Pruitt see it, regulations like this need to be dismantled to end the EPA's "job killing war on coal." Other experts say a roll back of the CPP is in the fossil fuel industry's best interest, but can't revitalize Big Coal.

It's important to recognize that Trump can't unilaterally sweep away the CPP with a single executive order. All he can do is give the EPA the green light to review and rewrite the plan under Pruitt. (As Oklahoma Attorney General, Pruitt sued to block implementation of the CPP, and later, he dismissed calls from Democrats to recuse himself from the rewriting process.) Any real changes to the CPP will require years of public hearings and, undoubtedly, lawsuits from environmental agencies arguing that a coal-friendlier version of the policy doesn't go far enough in protecting us from climate pollution. In the meantime, however, Pruitt can send the message to the fossil fuel industry that the EPA, under his leadership, will be lax in enforcing regulations. The message to the rest of the world is that the America doesn't give a shit about tackling climate change.

"I think that message has already been sent," Janet McCabe, the former head of the EPA's Office of Air and Radiation, and one of the architects of the Clean Power Plan, told Gizmodo.

When crafting the CPP, McCabe told Gizmodo, the EPA's plan was to allow states to set emissions targets in line with a nationwide energy transition away from coal, and towards natural gas and green energy. Coal usage has been dropping for decades as the US invests in fracking and green energy, with solar in particular growing in prominence as prices have fallen. The regulatory impact of the CPP adds to the market forces crippling coal, but it isn't the root cause of coal's demise.

This makes it difficult to quantify what *exactly* is being caused by the CPP in terms of jobs losses, versus what's happening naturally. Or as McCabe put it, "How do you tease out the effects of the Clean Power Plan in comparison to how the market is going anyway?"

The upside of accelerating the transition away from coal, McCabe said, was the opportunities afforded to the green energy sector, which has taken off explosively in recent years, both in the United States and internationally. Green energy is expected to continue to grow as new technology makes solar panels and wind turbines more cost-effective, and as production of these technologies reaches economies of scale. Last year, renewable energy accounted for more than half of all new power-generating capacity worldwide, with roughly half a million solar panels installed around the planet each day. A person interested in bringing back American jobs might call such an industry a good investment.

"When you look at the impacts of regulation, you look not just at job losses but also potential job gains," McCabe said.

Jobs aside, the CPP is essential to upholding our commitment to the Paris Climate Agreement, an agreement between 141 countries to zero out carbon emissions this century in order to limit global warming to 2 degrees Celsius and prevent some of the more catastrophic impacts scientists are predicting. Dismantling the CPP essentially walks back our commitment not just to Paris specifically, but to international climate action. Pruitt called the agreement a "bad deal" but there's no official word on whether the US will try to withdraw, a process that would take several years.

Tellingly, several of the states that sued to block the Clean Power Plan's implementation—arguing that the rules were too stringent—are nonetheless still meeting their emissions reduction goals, because they've increased their reliance on natural gas and green energy. Even if the CPP is weakened, the market forces driving that energy transition will still exist. Gas will still be cheaper and cleaner than coal. Green energy will still, eventually, be cheaper and cleaner than coal. And a lot of coal miners will still be out of a job.

Daily Caller
http://dailycaller.com/2017/03/28/industry-eagerly-anticipating-trump-order-trashing-obamas-green-legacy/
Industry 'Eagerly Anticipating' Trump Order Trashing Obama's Green Legacy
By Andrew Follett 3/28/17, 1:03PM

The largest U.S. business lobby is excited President Donald Trump will sign an executive order to repeal much of Obama's environmental legacy.

"This is something we are eagerly anticipating," Christopher Guith, vice president for energy at the U.S. Chamber of Commerce, told The Daily Caller News Foundation. "It addresses many overreaches of the previous administration. It starts the process by which agencies can create sane and sound regulations."

Trump's order will get the Environmental Protection Agency (EPA) to revisit Obama's Clean Power Plan, alter the previous administration's environmental permitting process, and rework the government's "social cost of carbon." Rolling back these rules and regulations should get the U.S. closer to energy independence and spur job growth.

"The order give EPA premise to revisit the Clean Power Plan [CPP] which was unworkable," Guith said "This isn't about crippling the CPP, it is about making a system which actually work. This will ultimately bring about more carbon dioxide emissions reduction than Obama's plan would and will do it without the economic devastation."

If implemented, CPP would have cost a staggering $41 billion annually, which equates to about $10.74 a month for each American. Less than 39 percent of Americans would be willing to spend that level of extra cash to fight global warming, according to a poll. The Clean Power Plan would have only adverted 0.019° Celsius of warming by the year 2100, an amount so small it can't be detected, according to analysis by the libertarian Cato Institute using models created by the Environmental Protection Agency.

Trump's executive order will also change how the federal government interprets the National Environmental Policy Act (NEPA) will make it easier for companies, individuals and government entitites to get environmental permits. President Obama changed the way the government interpreted the act in a way which made permitting very difficult

"The guidance that the Obama administration put out without going through any sort of rulemaking will also be addressed," Guith told TheDCNF. "This was a godsend for environmental lawyers as they could sue the federal government for any previous projected which addressed greenhouse gases. Rolling back the unilateral action on NEPA permitting reviews by the Obama administration will change that."

The other major impact of Trump's order is to shift the way government agencies measure carbon dioxide (CO2) emissions.

"When the Obama administration was trying to justify regulations that would cost the economy tens of billions of dollars they created this process called the Social Cost of Carbon," Guith concluded. "The Trump administration has said that this isn't how we do cost benefit analysis. We don't just invent them This was used to justify regulations which cost tens of billions of dollars and claim they were saving money."

EPA previously used the Social Cost of Carbon to claim CPP created billions of dollars in economic benefits from reducing carbon dioxide emissions, allowing the agency to significantly overstate the benefits of the regulation.
Free market groups were also pleased by the executive order, as it will significantly reduce regulation.

"President Trump's Executive Order on withdrawing much of President Obama's climate and energy-rationing agenda is welcome news for the American people," Myron Ebell, director of energy and environment at the libertarian Competitive Enterprise Institute and Trump's former EPA transition head, said in a press statement. "These rules, which are clearly illegal, would raise electric rates for consumers significantly and do immense economic damage to the heartland states where U. S. manufacturing is now concentrated."

BNA
http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=108093090&vname=dennotallissues&wsn=499566000&searchid=29533522&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0
Trump Said to Issue Far-Reaching Reversal of Obama Climate Push
By Jennifer A Dlouhy 3/28/17

President Donald Trump is set to sign a sweeping executive order March 28 aimed at promoting domestic oil, coal and natural gas by reversing much of his predecessor's efforts to address climate change.

The document lays out a broad blueprint for the Trump administration to dismantle the architecture that former President Barack Obama built to combat the phenomenon, according to details shared with Bloomberg News. Some of the changes will happen immediately, while others will take years to complete.

The order will compel federal agencies to quickly identify any actions that could burden the production or use of domestic energy resources, including nuclear power, and then work to suspend, revise or rescind the policies unless they are legally mandated, are necessary for the public interest or promote development.

It also will toss out two Obama-era directives that gave climate change a prominent role in federal rule making. One advised government agencies to factor climate change into environmental reviews, such as those governing where oil

drilling could take place. The other, called the "social cost of carbon," is a metric reflecting the potential economic damage from climate change that the Obama administration used to justify a suite of regulations.

Pro-Growth

"This is about making sure that we have a pro-growth and pro-environment approach to how we do regulation in this country," Scott Pruitt, head of the Environmental Protection Agency, said on ABC's "This Week" program March 26.

Trump, who has called climate change a hoax, has vowed to reorient the government so that U.S. oil and coal producers thrive and steel and auto manufacturers don't face "job-killing restrictions." The coming order underscores Trump's commitment to make good on his campaign promises, which helped propel him to victory in industrial strongholds such as West Virginia and Pennsylvania.

The details shared with Bloomberg News reflected the latest draft of the White House order and could change before the announcement, which Pruitt said would happen March 28.

While the order will make clear that the target of the planned regulatory rollback should be policies curbing the production of oil, natural gas, coal and nuclear energy, it also will say the U.S. is well served when affordable, reliable and clean electricity is produced from an array of sources, including solar, wind and hydropower.

The order also is set to include a targeted assault on a handful of specific Obama-era regulations. It will require the Interior Department to lift a moratorium on the sale of new coal leases on federal land and compel the EPA to review, and, "if appropriate," begin proceedings to suspend, revise or rescind regulations designed to reduce greenhouse gas emissions from power plants.

Clean Power Plan

Obama's Clean Power Plan was designed to cut carbon dioxide emissions from electricity by 32 percent by 2030 compared to 2005 levels. The initiative has been in legal limbo since the Supreme Court stayed it while it was reviewed by a federal appeals court. The Trump administration now is expected ask that court to put the matter on hold to allow it time to revise or undo the measure—an action environmentalists have vowed to challenge.

Other policies in the crosshairs: an EPA rule setting requirements for greenhouse gas emissions for construction of new power plants and an Interior Department regulation setting mandates on hydraulic fracturing of oil and gas wells on federal lands. The Interior Department's Bureau of Land Management said earlier this month that it will begin the process to rescind the regulation, which requires companies to disclose the chemicals they pump underground and to seal off wastewater in storage tanks.

Revoking Directives

Trump's executive order also is set to revoke six specific directives from his predecessor, including Obama's broad strategy for paring emissions of methane released from oil and gas operations. Other Obama directives targeted for repeal include one on climate change and national security, as well as a pair of directives from June 2013 that laid out his climate plans.

The Obama administration wove climate considerations into decisions across the federal bureaucracy, from efficiency standards for microwave ovens to the refurbishing of government buildings.

Coal Market

The changes may have little immediate impact on the market for coal, which is facing stiff competition from cheaper natural gas and renewable energy, analysts said.

Even before the Obama administration imposed the coal-leasing moratorium in January 2016, producers had little interest in adding new federal reserves to their portfolios amid slumping domestic demand. The U.S. government has sold just one coal leases since October 2012, though earlier this month it approved a transaction originally sought in 2005. Existing federal leases contain at least 20 years' worth of coal, according to Interior Department estimates.

Even without the EPA's Clean Power Plan in force because of the Supreme Court stay, using coal to generate electricity has been in decline as a result of previous pollution regulations and competition from low-cost natural gas, solar and wind.

Coal's Decline

The removal of the Clean Power Plan could halt coal's decline as a source of electricity during the next two decades, according to projections from the Energy Information Administration. More coal use would mean less natural gas use, EIA said.

Trump's action sets in motion at least a year of bureaucratic work at the EPA to formally dismantle the Clean Power Plan. And whatever happens will inevitably be challenged in court by those same environmental groups.

By contrast, the Interior Department can undo the coal leasing moratorium with the stroke of a pen, the same way it was imposed a year ago, under an administrative order issued by former Interior Secretary Sally Jewell.

Trump's targets also would reduce the role of climate change in government decision-making. For instance, the social cost of carbon metric served as the linchpin for many Obama administration environmental rules. Critics say the number—now nearly $40 for every metric ton of carbon dioxide emitted into the atmosphere—gives artificial precision to uncertain conditions nearly 300 years in the future.

According to shared details of the executive order, the Trump administration will disband the working group that created the social cost of carbon and return to an earlier 2003 approach for calculating the costs and benefits of proposed regulations.

Wall Street Journal
https://www.wsj.com/articles/despite-trump-move-utilities-shift-from-coal-is-set-to-continue-1490693406
Despite Trump Move on Climate Change, Utilities Shift From Coal Is Set to Continue
By Cassandra Sweet 3/28/17, 10:08AM

The Trump administration's expected move to roll back President Obama's signature climate-change policy may extend the life of some aging coal-fired power plants, but companies and energy experts say it is unlikely to reverse the U.S. utility industry's shift to natural gas, solar and wind as leading sources of electricity.

President Donald Trump is expected Tuesday to sign an executive order that would begin to reverse the Clean Power Plan, which would have required utilities to reduce power-plant carbon-dioxide emissions to 32% below 2005 levels by 2030. The order also rolls back guidance from the Council on Environmental Quality on climate change and rescinds a temporary ban on new coal leases on federal lands, a senior White House official said Monday night.

While the action may give a reprieve to some coal-fired plants facing extinction, large utilities say they will continue long-term investments to generate more power from gas, wind and solar, which are being driven by economic as well as regulatory forces. The White House official said Monday that the order is part of the president's promise to restore the coal sector, but the official acknowledged that merely repealing the regulations wouldn't bring back jobs.

Cheap U.S. natural gas unlocked by hydraulic fracturing and horizontal drilling has prompted many companies to scrap older coal plants in favor of gas-fired plants, which require fewer workers to operate. Companies are also taking advantage of tax credits for renewable power to build out solar and wind farms, which are becoming more cost-competitive with fossil-fuel generation thanks to economies of scale and advances in technology.

Duke Energy Corp. says it plans to invest $11 billion in natural gas and renewable power generation over the next 10 years, as the company aims by 2026 to cut its greenhouse-gas emissions by 35% from 2005 levels.

That represents a long-term company strategy and isn't likely to change, Duke Chief Executive Lynn Good said in a February interview. The utility's power generating mix is now 34% coal and 28% natural gas, compared with 61% coal and 5% gas in 2005. By 2026, it estimates gas will be the dominant fuel, followed by coal, nuclear and renewable power.

"Because of the competitive price of natural gas and the declining price of renewables, continuing to drive carbon out makes sense for us," said Ms. Good. "Administrations will change during the life of our business and our assets, and we'll continue to move forward in a way that makes sense for our investors and our customers."

Southern Co. plans to invest at least $1 billion a year over the next five years in new wind farms. It now uses natural gas to generate 47% of its power, with coal providing 31%, nuclear 15%, and hydropower, wind, solar and other renewable sources 7%.

"Going forward, we anticipate an increase in renewable generation capacity and declining utilization of coal," said Terrell McCollum, a spokesman for the Atlanta-based utility.

U.S. utilities generated more electricity from natural gas than from coal last year. Power from coal plants fell to 3.4 million megawatt-hours a day in 2016 to supply 30% of U.S. generation, down from 33% in 2015, according to the U.S. Energy Department. Natural-gas plants supplied 3.8 million megawatt-hours daily, or 34% of total power supplies this past year, up from 33% the previous year.

Hydropower and other renewables generated 1.7 million megawatt-hours daily, or about 15% this past year, up from 13% in 2015. Nuclear plants contributed 20%, and petroleum and other sources produced the rest.

Without the Clean Power Plan, however, the Energy Department expects coal-fired generation from existing plants to rise and natural gas-fired generation to fall by 2020, followed by another reversal after 2030 when it anticipates gas will exceed coal again.

The extent of a coal recovery will depend largely on the price utilities pay for gas, which averaged about $3 a million British thermal units last year. The department predicts it will rise to more than $4.50 in 2020, and $5 in 2029.

Many energy companies face state requirements to increase renewable power generation and are coming under pressure from large investors such as pension funds and university endowments to clean up their operations.

More pension funds, university endowments and other funds are divesting from companies that burn coal over concerns about the environment, said Fiona Reynolds, managing director at Principles for Responsible Investment, a London-based nonprofit that helps funds figure out how to cut the carbon footprint of their investments. "Investors want to see companies that are moving away from coal, to other energies," she said.

Nearly 700 institutions worth more than $5 trillion have pledged to divest from fossil fuel companies, according to a December report by consulting firm Arabella Advisors.

Still, some coal plants that are economical to run, particularly those owned by rural electric cooperatives in states where coal is plentiful, are likely to enjoy longer lives without the carbon rule.

Basin Electric Power Cooperative, based in Bismarck, N.D., was among the power generators that fought the Clean Power Plan in court. It was concerned it would be forced to shut down coal plants it is still paying off, and replace them with new gas plants and wind farms, at a cost of $5 billion.

"We're building natural gas and wind, but that doesn't mean we would take a perfectly functioning coal facility and not consider that a valuable resource as well," said Mike Eggl, a spokesman for Basin Electric.

BBC
http://www.bbc.com/news/science-environment-39419074
Trump to make major change to US climate change narrative
By Matt McGrath 3/28/17

"This is, I think, one of the most historic attacks on climate and environmental action that the US has ever seen," said Liz Perera from the Sierra Club.

Her words are certain to cheer Trump supporters everywhere.

Green "job-killing" regulations limiting energy production have long been a red rag for Donald Trump, as candidate and President.

His **expected new energy independence executive order** seeks to radically change the US narrative on climate change, its causes and its importance. The best way of fighting global warming according to the new outline is to create prosperity. Environmental regulation should be about air and water. CO2, in this light, is your friend.

Supporters believe that cutting back Obama climate regulations will create thousands of jobs in the newly liberated oil and gas industries.

His opponents agree the new order will be a job creator - but they'll be jobs for lawyers, not in the coal fields.

Front and centre is practical action on the **Clean Power Plan** (CPP), the Obama project to cut fossil fuels from electricity production. Although it has long **been tied up in the courts**, the CPP will be left to fester there while the new administration comes up with a much weaker replacement.

"Undoing the rule will not be straightforward," said Prof Bruce Huber, from the Notre Dame law school.

"For the Environmental Protection Agency (EPA) to reverse course, it will have to propose a new rule, with all the lengthy procedures that entails. When President George W Bush tried to reverse course on some of President Clinton's signature environmental regulations, those efforts took years and were not entirely successful."

In terms of coal, the new executive order will allow the Department of the Interior to lift a moratorium on the sale of new coal leases on federal lands. However, boosting coal as a source of energy, and jobs, will be very difficult.

Many coal plants **have shut down** not because of Obama's carbon restrictions but because of mercury pollution associated with burning the fuel. Thanks to fracking, cheap natural gas has soared as a source of power generation, and renewables are taking an every bigger share.

Former State department climate adviser Andrew Light now works for the World Resources Institute. Both of his grandfathers were coal miners.

"They were paid by the tonne for the coal they pulled out of the ground, but those jobs are gone, and technology has moved beyond that and I hope it's the case that voters in the coal states will recognise that their jobs aren't magically coming back because of this executive order," he told BBC News.

President Obama sought to put consideration of climate change at the heart of all government policy - but by revising the **social cost of carbon measure** and encouraging an immediate government review of all rules that inhibit energy

production, President Trump is signalling a change in the widely held philosophy that CO2 is the enemy, the main driver of climate change.

While rolling back Obama era ideas like the role of climate change in national security, or how climate change should be considered in relation to the **National Environmental Policy Act**, the Trump plan does not directly attack the key finding on which much of America's carbon restrictions are based.

Back in 2007, the US Supreme Court **ruled** that carbon dioxide gas was a pollutant under the Clean Air Act.

In response, the EPA ruled in 2009 that CO2 and other gases were responsible for contributing to climate change which results in a threat to the public health and welfare of current and future generations.

This "endangerment finding" compels the federal government to regulate emissions of CO2. And according to some environmentalists, this finding is the solid rock that Trump's plans will be dashed against.

"The law of the land is that CO2 endangers my public health and welfare," said Liz Perera from the Sierra Club.

"So they have to regulate it. What they are doing now is saying that all the Obama regulations were wrong but that means they are going to have to put something forward in their place and by the law it has to be adequate or we can sue them every step of the way."

Other experts believe that the ultimate goal of this executive order will be to overturn the Supreme Court ruling on CO2 as a pollutant.

They believe that the **declaration** of EPA administrator Scott Pruitt that CO2 was not a "primary contributor" to climate change is instructive of the direction of travel.

"It is fundamental," said Andrew Light. "I believe that Scott Pruitt wants to go after the endangerment finding. Their argument is that climate change exists, but it is not the case that humans are causing it.

"It is the endangerment finding that draws that tight connection between the fact that humans are making it and the fact that global warming is happening. Once you destabilise that point then you can go for the endangerment finding. That would be the biggest win they could get."

But Liz Perera, for one, believes that won't happen.

"We have the economics on our side, we have the market on our side, we have the public on our side, and we have the law on our side - that this is endangering public health and welfare. They can't change any of those things."

But in many ways, extended court battles are exactly what President Trump and the fossil fuel lobby are looking for.

"Delay is what they want," one green source told me. "Delay is winning."

Reuters
http://www.reuters.com/article/us-usa-trump-energy-idUSKBN16Z1L6
Trump to sign order sweeping away Obama-era climate policies
By Valerie Volcovici and Timothy Gardner 3/28/17 8:58 AM

U.S. President Donald Trump will sign an executive order on Tuesday to undo a slew of Obama-era climate change regulations, a move meant to bolster domestic energy production and create jobs, but environmentalists say the order is dangerous and vow to challenge it in court.

The decree's main target is former President Barack Obama's Clean Power Plan, requiring states to slash carbon emissions from power plants - a critical element in helping the United States meet its commitments to a global climate change accord reached by nearly 200 countries in Paris in December 2015.

The order will also rescind a ban on coal leasing on federal lands, reverse rules to curb methane emissions from oil and gas production, and reduce the weight of climate change in federal assessments of new regulations.

Trump has long telegraphed the moves, and claimed that undoing green regulation will trigger a new boom in oil, gas, and coal production and create thousands of jobs, all without harming U.S. air and water quality.

"We're going to go in a different direction," a senior White House official told reporters ahead of Tuesday's order. "The previous administration devalued workers with their policies. We can protect the environment while providing people with work."

Energy analysts and executives have questioned whether the moves will have a big effect on their industries, and environmentalists have called them reckless.

"I cannot tell you how many jobs the executive order is going to create but I can tell you that it provides confidence in this administration's commitment to the coal industry," Kentucky Coal Association president Tyler White told Reuters.

Trump will sign the order at the Environmental Protection Agency with Administrator Scott Pruitt, Interior Secretary Ryan Zinke and Energy Secretary Rick Perry on Tuesday afternoon.

The wide-ranging order is the boldest yet in Trump's broader push to cut environmental regulation to revive the drilling and mining industries, a promise he made repeatedly during the presidential campaign.

'ASSAULT ON AMERICAN VALUES'

Environmental groups hurled scorn on Trump's order.

"These actions are an assault on American values and they endanger the health, safety and prosperity of every American," said billionaire environmental activist Tom Steyer, the head of activist group NextGen Climate.

Green group Earthjustice was one of many organizations that said it will fight the order both in and out of court. "This order ignores the law and scientific reality," said its president, Trip Van Noppen.

An overwhelming majority of scientists believe that human use of oil and coal for energy is a main driver of climate change, causing a damaging rise in sea levels, droughts, and more frequent violent storms.

Trump and several members of his administration, however, have doubts about climate change, and Trump promised during his campaign to pull the United States out of the Paris climate accord, arguing it would hurt U.S. business.

Since being elected Trump has been mum on the Paris deal and the executive order does not address it.

Christiana Figueres, former executive secretary of the United Nations Framework Convention on Climate Change who helped broker the Paris accord, lamented Trump's order.

"The action by the U.S. to undo important domestic carbon reduction regulation in the face of the enormous momentum building globally toward a low carbon economy risks putting the country on a back-foot at a time when most Americans are looking to lead," she said in a statement.

"Trying to make fossil fuels remain competitive in the face of a booming clean renewable power sector, with the clean air and plentiful jobs it continues to generate, is going against the flow of economics," she said.

The order will direct the EPA to start a formal "review" process to undo the Clean Power Plan, which was introduced by Obama in 2014 but was never implemented in part because of legal challenges brought by Republican-controlled states.

The Clean Power Plan required states to collectively cut carbon emissions from power plants by 32 percent below 2005 levels by 2030.

Trump's order lifts the Interior Department's Bureau of Land Management's temporary ban on coal leasing on federal property put in place by Obama in 2016 as part of a review to study the program's impact on climate change and ensure royalty revenues were fair to taxpayers.

It also asks federal agencies to discount the cost of carbon in policy decisions and the weight of climate change considerations in infrastructure permitting, and reverses rules limiting methane leakage from oil and gas facilities.

Politico
http://www.politico.com/story/2017/03/donald-trump-obama-climate-change-policies-236570
Trump takes biggest swing yet at Obama climate legacy
By Alex Guillen 3/28/17, 7:01AM

President Donald Trump will direct the federal government on Tuesday to begin dismantling his predecessor's most significant climate change policies, with a sweeping directive telling agencies to stop trying to reduce the carbon pollution of electric utilities, oil and gas drillers and coal miners.

The executive order Trump will sign represents his biggest blow yet to former President Barack Obama's climate legacy. But it does not go as far as some conservatives would like to dismantle the EPA's authority to regulate greenhouse gases, nor will it begin to separate the U.S. from a landmark international climate accord — two areas of intense disagreement within the administration.

Democrats argue that Trump is ignoring the risks of climate change for the sake of rewarding supporters in the fossil fuel industry.

"My hope is that we're at peak climate science denial in the Republican Party," Sen. Chris Murphy (D-Conn.) told POLITICO Monday. "They're going to extraordinary lengths to deny this meteor that is global warming is catapulting toward the Earth. I'm scared stiff. My kids won't be able to solve this problem if we don't tackle it right now because it will be too late in 20 years."

After last week's embarrassing failure of Trump's attempt to repeal and replace Obama's health care law, the energy executive order offers the president a chance to refocus on another key campaign-trail promise: unleashing the American energy industry. The order comes on the heels of Trump's move to ease Obama's ambitious vehicle fuel efficiency requirements and his order to reverse EPA's controversial Waters of the U.S. rule. The president has also recently signed legislation undoing Obama-era rules on Appalachian coal mining and energy companies' payments to foreign governments.

Trump plans to order the EPA to rewrite tough rules that make it virtually impossible to build a new coal-fired power plant, and he will tell the Interior Department to end Obama's moratorium on new coal mines on federal lands, among other steps, White House officials said.

Additionally, the president's "energy independence" executive order also will repeal several Obama-era environmental directives aimed at reducing the federal government's own carbon footprint, and it will direct agencies to ferret out any additional policies that "result in impediments" to U.S. energy production, a likely reference to restrictions on fracking and offshore drilling. The president also will tell federal regulators to stop using the "social cost of carbon," which attempts to quantify the effects of climate change, in economic analyses of future rules.

"There is every reason to believe that the federal government will no longer seek to punish American consumers and businesses for using the energy resources that fuel our economy," U.S. Chamber of Commerce President and CEO Thomas J. Donohue said in a statement welcoming the order.

But Trump is not expected to tell EPA to reconsider the underlying policy that lets it regulate carbon emissions — the 2009 "endangerment finding" in which it declared that greenhouse gas pollution threatens human health and welfare. Nor will he address whether the U.S. will stay in the 2015 Paris climate accord.

"We're happy with it so far and we look forward to the right decisions on Paris and endangerment, but I think those are still to be made and they're a ways down the road," said Myron Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute and the former leader of Trump's EPA transition team.

EPA Administrator Scott Pruitt went on national TV earlier this month to declare that carbon dioxide is not "a primary contributor to the global warming that we see," a statement that is at odds with the conclusions of the vast majority of climate scientists, including those at his own agency. But Pruitt has not followed up on that statement with any effort to reverse the Obama-era endangerment finding — a factor that sources say contributed to last week's abrupt departure of a Trump appointee from the agency.

On Monday, a writer for Breitbart.com, the site previously run by White House strategist Steve Bannon, suggested that a failure to revoke the endangerment finding would be grounds for Pruitt to resign.

"If Scott Pruitt is not up to that task, then maybe it's about time he did the decent thing and handed over the reins to someone who is," wrote James Delingpole, a prominent climate skeptic.

The White House did not rule out later revisiting the endangerment finding, which Trump promised on the campaign trail to review. But environmentalists hope the administration decides that would be too much trouble, given that the policy already survived judicial scrutiny, and that courts are unlikely to support revoking it given the overwhelming scientific data on climate change.

Trump has not nominated anyone to fill key leadership positions below Pruitt and Interior Secretary Ryan Zinke, leaving open the question of how quickly his order will yield any concrete results.

"It's going to be harder if you don't have those positions filled," said David Doniger, director of the climate and clean air program at the Natural Resources Defense Council. "Unless, actually, their intention is never to fill them and work through political operatives who are not accountable."

Trump's advisers are split over whether to withdraw from the Paris climate deal, which Obama joined with a pledge to reduce U.S. emissions at least 26 percent from 2005 levels by 2025. The U.S. would face no penalty for missing that target, but many conservatives nonetheless say Trump should abandon the agreement altogether, as he pledged to do during the campaign.

But more moderate advisers, including Trump's daughter Ivanka and his son-in-law Jared Kushner, fear that pulling out would damage relations with key U.S. allies. Administration officials are now considering a middle-ground approach: Stay in the deal in exchange for more international support for technologies to reduce emissions from fossil fuels.

The order was also silent on a carbon tax, another issue that has become a flashpoint in disputes between moderates and hardliners in the White House.

Despite the lofty rhetoric coming out of the White House, Tuesday's order will have relatively little immediate effect.

It will take EPA years to rewrite its Clean Power Plan and accompanying rules on future power plants — both of which courts already had frozen while lawsuits play out.

The Trump administration plans to ask federal courts to suspend lawsuits over the EPA climate regulations and send the rules back to the agency to be rewritten or withdrawn. But the D.C. Circuit Court of Appeals, which heard arguments on the Clean Power Plan six months ago, does not have to go along. The appeals court judges could rule any day on the Clean Power Plan, and a separate D.C. Circuit panel has scheduled oral arguments on the future plant rule for April 17.

If EPA will not defend the regulation, environmentalists and states like California and New York have indicated they will step up and do so. And the ultimate fate of EPA's climate authority likely will eventually be decided by the Supreme Court, which ruled in 2007 that the agency had to regulate greenhouse gases if they endanger public health — but did not say how.

Trump's plans for the social cost of carbon are less clear.

The Obama administration estimated of that each ton of carbon dioxide imposes $36 in costs to society to evaluate its climate rules. But Republicans and fossil energy supporters argued it arrived at that figure by counting global benefits while specifying only domestic costs — and they complain the metric was not subjected to a traditional notice-and-comment period before it was employed.

Critics also said the Obama administration used the social cost of carbon to impose stricter rules at EPA, the Energy Department and elsewhere that would be too costly to justify otherwise. Many environmentalists, meanwhile, complained that the amount was too low.

Whether Trump significantly lowers the cost of carbon or abolishes it altogether, the change could have a serious impact on energy regulations that will play out over a period of years. And it remains unclear how the courts might react. Federal judges have upheld agencies' use of the metric before, but some may be inclined to give deference to the Trump administration over what amounts to a highly technical calculation.

Meanwhile, Trump's order will also lead to the resumption of federal coal leasing. But major coal companies are hardly champing at the bit to sign new leases on federal land, although the Bureau of Land Management could make new tracts available relatively quickly. For example, a spokesman for Peabody Energy, which mines more U.S. coal than anyone else, told Bloomberg that the company will not need a new lease in Wyoming's Powder River Basin for "approximately a decade."

The Obama administration imposed a moratorium in February 2016 as part of a three-year review of the federal coal program. That followed reports from the Government Accountability Office, Interior's inspector general and a coalition of environmentalists and government spending watchdogs that concluded Interior was undervaluing coal on public lands.

Zinke hinted earlier this month that he will continue the underlying review, despite lifting the moratorium, to ensure taxpayers get the full value of coal being sold off of federal lands.

It's not clear that the moratorium cost any jobs, particularly since most coal mining is happening on private rather than public lands. The National Mining Association has not calculated the costs of the moratorium so far, but the group noted that coal mines on federal lands employ 14,000 miners.

Politico Pro
https://www.politicopro.com/tipsheets/morning-energy/2017/03/energy-executive-order-arrives-but-wont-go-far-enough-for-some-022057
Energy executive order arrives but won't go far enough for some
By Anthony Adragna 3/28/17, 5:41AM

TODAY'S THE DAY! President Donald Trump will travel to EPA headquarters today at 2 p.m. to sign a sweeping directive that will begin dismantling his predecessor's most significant climate change policies, Pro's Alex Guillén reports. White House officials said the executive order will ask EPA to rewrite its Clean Power Plan and an accompanying rule on future power plants, repeal several Obama-era environmental directives aimed at reducing the federal government's own carbon footprint, request the Interior Department end Obama's moratorium on new coal mines on federal lands and tell federal regulators to stop using the "social cost of carbon," which attempts to quantify the effects of climate change, in economic analyses of future rules, among other provisions.

Far enough? While the order takes a sledgehammer to Obama-era efforts to embed climate change considerations into all components of federal decision-making, it does not go as far as some conservatives would like. Trump will not tell EPA to reconsider its "endangerment finding," the underlying policy that lets it regulate carbon emissions, nor will he pull the U.S. from the international Paris climate deal. A columnist for Breitbart, the website previously run by Trump's chief strategist Steve Bannon, even suggested EPA Administrator Scott Pruitt should consider resigning because he is "more interested in building his political career than he is taking on the Green Blob."

Pro's Andrew Restuccia and Alex Guillén have a deeper look at the conflicts. Pruitt successfully argued in closed-door meetings against using the executive order to try to overturn the endangerment finding, saying the legal hurdles were too great. Hardliners now hope the White House, perhaps Bannon, will intervene in the matter. But the endangerment finding is not the only source of unrest within EPA — Pruitt is irked by the White House's slow pace in nominating deputies, while others are expressing frustration at the presence of former Washington State Sen. Don Benton, who is expected to leave the agency soon.

EPA Spokesman John Konkus did not directly address Pruitt's role in discussions over the endangerment finding in a statement to ME Monday night: "The Executive Order focuses on the Clean Power Plan, and Administrator Pruitt is excited that the President is taking action on jobs, our economy, and the regulations that fail to put Americans first. This executive order is a victory for American jobs, and we think that speaks for itself."

A couple of important cautions: Neither Pruitt nor Interior Secretary Ryan Zinke have any reinforcements nominated below them to help implement the order, leaving open the question of how quickly Trump's order will yield any concrete results. And despite the lofty rhetoric coming out of the White House, Tuesday's order will have relatively little immediate effect. Some efforts, like rewriting the Clean Power Plan and other regulations, will take years to complete and face vigorous legal challenges from environmental advocates and blue states all along the way.

Not lying down: But green groups aren't waiting to mount their resistance to the administration's action. Activists are looking to protest outside Trump's speech at EPA and the Sierra Club, Mom's Clean Air Force and People's Climate Movement will host what they're calling an "emergency" White House rally tonight at 5 p.m. to fight rolling back the Clean Power Plan. "Trump can't reverse our clean energy and climate progress with the stroke of a pen, and we'll fight Trump in the courts, in the streets, and at the state and local level across America to protect the health of every community," Sierra Club Executive Director Michael Brune said in a statement. And five Senate Environment and Public Works Committee Democrats will hold their own press availability at 2 p.m. to respond to the executive order.

TRUMP TEAM RECOMMENDS DEEP DOE, EPA CUTS: A budget breakdown obtained by POLITICO recommends deep cuts for key EPA and Energy Department programs during the rest of fiscal year 2017, Pro's Alex Guillén and Helena Bottemiller Evich report.

DOE would take a $1.4 billion cut overall, including a 25 percent cut to the Office of Energy Efficiency and Renewable Energy.

EPA would lose $247 million, including a $48 million cut to the research and development account, largely from scaling back climate research. The document also suggests cutting $115 million from a more than $1 billion grant program to help states run their own environmental offices.

Interior's budget would take a $371 million hit, including $51 million from the Payment in Lieu of Taxes program, which compensates states with abundant federal land. It also proposes ending Rep. Hal Rogers's coal mine reclamation pilot project, saving $90 million, and would cut $372 million from the Low Income Home Energy Assistance Program.

But, but, but: Helena and Sarah Ferris report the request may not find a friendly airing on Capitol Hill. "Lawmakers have indicated they are prepared to reject Trump's calls to gut programs they deem important," they report.

READY TO ROLL: The Dakota Access Pipeline now contains oil ready for shipment, the pipeline operators said. The news marks the latest success for pipelines that President Trump highlighted in executive orders he signed during the first week of his taking office, following Trump's approval of Keystone XL on Friday. DAPL developer Energy Transfer Partners said in a court filing that it is in the last stages of commissioning the 1,200-mile pipeline and preparing it to deliver crude. DAPL opponents earlier this month lost their court fight seeking a block its completion.

HOW TRUMP MAKES POLICY CALLS: Trump is increasingly leaning on business executives to help shape his nascent policy decisions, Pro's Andrew Restuccia reports. The president often asks CEOs during private conversations to list the federal regulations they would most like to eliminate, according to people who have spoken with him. It's a level of access that is especially astonishing to industry and business executives used to being shut out during eight years with Barack Obama in the White House.

The rise of the business community comes as career staff at federal agencies are increasingly being left out of policy discussions: EPA's transportation experts were sidelined during the internal discussion about reopening Obama's fuel economy standards, infuriating staffers who had worked on the issue for years, according to two people familiar with the issue. And Trump's political appointees did not consult with State Department officials before the president issued a January memo calling for a Keystone approval.

FLINT GETS PIPE PROMISE: Under a settlement filed in federal district court Monday, the state of Michigan and city of Flint for the first time committed legally to replace 18,000 water service lines made of lead and galvanized steel. If approved by the judge, the agreement would end a lawsuit brought by Flint pastors, the Natural Resources Defense Council and the American Civil Liberties Union. The deal would have the state set aside $87 million for the work, in addition to the $100 million in federal funds approved by Congress last year, and commit to monitoring requirements to ensure the water's safety, but it would stop short of the door-to-door bottled water delivery that the plaintiffs sought in the suit.

YOU'RE HIRED: J.P. Freire is expected to join EPA as communications director, two sources with knowledge of the hire tell ME. Freire is currently communications director for Sen. Orrin Hatch. Neither Freire nor EPA responded to requests for comment.

ANOTHER EPA-RELATED BILL HEADED TO HOUSE FLOOR: The House Rules Committee meets today at 3 p.m. to discuss the EPA Science Advisory Board Reform Act (H.R. 1431), likely clearing the measure for floor action later this week. The bill, similar versions of which have cleared the House in prior congresses, would overhaul how members are picked for the agency's independent science advisory board to allow more industry-associated scientists to come aboard.

E&E News
http://www.eenews.net/energywire/2017/03/28/stories/1060052176
It's D-day for climate regs. Bombs fall at 2 p.m.
By Evan Lehmann 3/28/17

President Trump will try to land a knockout blow on his predecessor's sprawling climate agenda by issuing an executive order today targeting at least nine actions that form the foundation of U.S. efforts to cut emissions and prepare for rising perils.

The "energy independence" order, to be signed at 2 p.m. today, underscores Trump's belief that the seriousness of climate change was overblown by the past administration and deserves to be set aside in order to revive a struggling coal industry and encourage an unbridled boom in the production of oil and gas.

A senior White House official, when asked yesterday if the president agrees with scientists who say that people are largely responsible for rising temperatures, told reporters, "Yeah, sure."

But the administration appears deeply skeptical about the extent of potential damage that climate change might cause, and the order to be signed today would leave the administration seemingly free of any policy to address the risks — both environmental and economic — that scientists have warned about for years.

"I mean, to the extent that the economy is strong and growing and you have prosperity, that's the best way to protect the environment," the White House official said in a briefing about the order. "But certainly, natural gas is important. Clean coal's important. Nuclear is important. Renewables are important."

Today's executive order sets EPA on the road to rescind the Clean Power Plan, an Obama-era rule to reduce emissions at power plants 32 percent by 2030. The official said rescinding the rule could take up to three years and is bound to face legal challenges.

The order also eliminates Obama-era efforts to improve adaptation, embed climate risks in national security apparatuses, reduce agency emissions, expand the importance of climate impacts in the National Environmental Policy Act and freeze new coal leases on public land. It also begins a review of methane regulations by EPA and the Bureau of Land Management and a rule on hydraulic fracturing by BLM. And it will instruct agencies not to use the social cost of carbon when weighing the costs and benefits of environmental regulation.

The order also promotes fossil fuel production. It requires agencies to identify "all regulations, all rules, all policies [and] guidance documents that serve as obstacles or impediments to domestic energy production," the official said.

Then, in 180 days, the White House will use those agency plans to develop a "blueprint" for energy policy.

Does Trump believe in man-made warming? 'Sure, yeah'

The Clean Power Plan is the cornerstone of the United States' climate policy, and it is a key to meeting the nation's commitment under the global Paris Agreement, under which the United States has pledged to cut emissions 26 to 28 percent by 2025. Whether the United States will remain in the Paris accord is still being discussed in the White House, but the official suggested the nation's commitments stand to be weakened. Paris is not included in the order.

"I mean, we have a different view about how you should address climate policy in the United States, so we're gonna go in a different direction," the official said. "I can't get into what that ultimately means from an emissions standpoint. I have no idea."

The order also instructs the Department of Justice to essentially withdraw its defense of the Clean Power Plan in the U.S. Court of Appeals for the District of Columbia Circuit. Instead, it seeks to freeze the case, which is near completion, before the court issues an opinion expected this spring.

The official disputed the idea that the federal government is required to regulate greenhouse gases under Section 111(d) of the Clean Air Act.

"I'm sure there are plenty of people who disagree on that, but that's not something we're thinking of right now," the official said, adding that the administration is focused on unspooling the "massive" Clean Power Plan and not devising new policies to address emissions.

Environmental groups are already threatening to sue the government if it fails to aggressively cut emissions. They contend that EPA is legally obligated to drive down climate pollutants. The official, meanwhile, described an EPA under Trump that focuses not on climate change but on the agency's "core mission" — conventional air and water pollution.

The official faced a string of questions from reporters about whether the president and his advisers believe that humans are causing climate change.

"I think the president understands there's a disagreement over the policy response, and we're gonna see that in the order tomorrow. We're taking a different path," the official said.

When pressed on whether Trump believes in man-made warming, the official said, "Sure, yeah."

A campaign promise checked off

Another reporter asked if the official believes that sea-level rise could cause economic damage to major cities like Miami, New York and New Orleans, as scientists are warning.

"I'd like to see the research. Sure, that would be good. Show it to me," the official said.

The reporter replied: "So are you saying there's not rising sea levels?"

The official answered: "I didn't say that all. I want to see the study."

The president has sent inconsistent signals about his views of human-caused climate in the past 18 months, saying in December 2015 that it's a "hoax," and a year later that there is some "connectivity" between people's actions and warming.

Today's order ushers a White House that is still reeling from last week's remarkable legislative loss on health care into the embracing arms of the coal industry. Trump vowed last May to revive jobs in the hard-hit towns of Appalachia by erasing the Clean Power Plan.

"We're going to rescind all the job-destroying Obama executive actions," Trump said then. "OK, remember that. We're going to save the coal industry. We're going to save that coal industry, believe me. We're going to save it."

He promised to revoke the climate rules within 100 days of taking office. It's day 68.

E&E News
http://www.eenews.net/climatewire/2017/03/28/stories/1060052178
Was the climate rule really bad for the economy?
By Emily Holden 3/28/17

As President Trump today pulls the first strings in unraveling President Obama's signature climate change regulation, he will claim he's saving Americans from skyrocketing electricity bills and putting coal miners back to work.

In truth, that's hard to show.

Experts say it's difficult to get more than a rough estimate of how the Clean Power Plan would influence power costs, since natural gas and renewable energy prices play a role, as do state choices about trading systems.

Canceling the first-ever standards to reduce emissions from power plants is also unlikely to revive the dying coal industry, although it may keep some jobs in western U.S. mines from disappearing, according to the U.S. Energy Information Administration.

While economic studies on the rule have varied wildly, the Trump administration is relying on one paid for by the coal lobby and conducted by NERA Economic Consulting. NERA found that the Clean Power Plan could cause double-digit electricity price increases in many states. In a briefing yesterday, the White House cited that finding and argued that it couldn't pursue any policy that "puts the economy at risk."

Supporters of the Clean Power Plan, however, point to studies that show people would save money on electricity under the rule. They believe the Clean Power Plan would spur energy savings and result in lower bills. U.S. EPA and EIA came in somewhere in between, estimating that electricity prices would rise slightly at first but fall later. EPA thought they would be lower than without the rule by 2030.

The huge number of unknowns makes it "very easy for folks to cherry-pick desired results," said Noah Kaufman, a climate economist with the World Resources Institute who worked for the Obama administration. NERA assumed much higher costs for wind and solar power than did groups like MJ Bradley & Associates and Synapse Energy Economics, Kaufman noted in a recent analysis.

Despite the wide range of estimates, Kaufman said he hasn't seen any study that "makes a compelling and independent case to show that the economic effects are anything other than just noise in comparison to the economy as a whole."

Industry groups disagree, and they believe the costs of the rule would be higher than any possible benefits.
A recent study by NERA for the U.S. Chamber of Commerce and the American Council for Capital Formation found that meeting the Paris climate pledge would cost the average American household up to $160 a year and eliminate up to 440,000 jobs by 2025 (*Greenwire*, March 16). Environmental groups attacked those numbers as unreasonable, saying the researchers intentionally picked the most expensive ways to comply. The chamber says it was being realistic about how the United States might regulate different sectors based on legal confines.

As those types of debate rage on, Trump today will claim a victory for cash-strapped Americans and fossil fuel workers. But the actual economic impact of his actions will be hard to decipher.

When ideology mixes with economics

Observers might assume that the true cost of climate action would fall in the middle of the range of estimates. Researchers warn against that.

"Across all the years I've looked at it, it's not necessarily in the middle," said Tom Wilson, a senior program manager at the Electric Power Research Institute who has been studying climate policy analyses since the 1980s and has witnessed the unexpected natural gas boom and rapid declines in renewable power costs.

"The sort of key thing is that all types of strange things can happen," he said.

Wilson in his presentations explains how analysts in the 1980s estimated the level of global carbon emissions for 2000 and nailed it. They got all the inputs wrong, believing before the Chernobyl meltdown that nuclear power would expand quickly and thinking that Africa would use more power than China. But somehow all the figures balanced out.

There is similar uncertainty in the power sector now. Cheap natural gas has pushed coal and zero-carbon nuclear power offline. It's unclear whether people will really want to buy electric vehicles even when they cost the same as traditional ones. They might not like the way the cars accelerate or could cling to range anxiety, Wilson explained.

"Fundamental issues like that would dictate the cost of a climate policy," he said.

Environmental advocates will also note that many studies don't consider the economic benefits of reducing carbon emissions and spurring other countries to do so, as well. They say policymakers should consider lowered public health costs, avoided infrastructure expenses and savings from curbing the intensity of extreme weather events.

While the exact costs of the Clean Power Plan are hard to pin down, soldiers on both sides of the political debate insist they know how the rule would play out. That's an age-old strategy.

When the House passed cap-and-trade legislation in 2009, and the Senate was considering it, some models showed that the legislation would have been economically manageable, recalled Greg Dotson, who worked for former Rep. Henry Waxman (D-Calif.), a co-author of the bill. Dotson cited one government study that found the cap-and-trade plan would have slowed the growth of the gross domestic product, but only by a few months and not for decades.

Dotson said critics misused some modeling to make their arguments that the measure would be bad for the economy. He said models also almost never adequately assessed the cost of failing to address climate change and exaggerated the importance of small effects projected to occur years in the future. For example, during the debate in 2009, opponents posted stickers on gas pumps warning of immediate price spikes that weren't projected to occur until 2030.

"When you start thinking about it in those terms, models show that it's possible to craft climate change policies in which the costs are small but the benefits are huge," he said.

At the time, it was mainly pundits and those in conservative circles citing industry studies against cap and trade. Now, the president is using such assessments to back up his executive actions.
Dotson said that could be helpful, in giving people a chance to do some fact-checking.

"The problem with whisper campaigns that take place by industry outside of Washington, D.C., is sometimes they're quite hard to rebut," Dotson said. "When something comes from the president's mouth or Administrator Pruitt's mouth ... it gives experts something to really focus on."
Public Citizen yesterday was already taking aim at Pruitt's comments on ABC News on Sunday that climate policies cause electricity rates to increase.

'Coal still has a role to play'

Part of why Clean Power Plan assessments are so hard is because EPA would have given states wide latitude in how to meet their goals, including by using carbon trading.

Before the courts stalled the rule, most states were considering carbon trading, which would have lowered costs, according to various studies by regional grid organizations.
To be sure, costs of the rule would vary around the country, likely hitting coal-heavy states that have been slower to transition away from fossil fuels the hardest.

Market realities are hitting states in the West particularly hard as they try to navigate coal plant closures as companies no longer find the fossil fuel cost-competitive.

Scott Segal, an industry lawyer at Bracewell LLP, said that while it's "always difficult for the government to establish a program that can expand or save any specific industry," the government can "remove obstacles."

He argued that while natural gas is cheap and renewable power is growing cheaper, "coal still has a role to play."

No power company in the country is looking to invest in a new coal plant. But Segal said that "market demands and unforeseen circumstances could spell a resurgence for coal," if the government gets the regulatory approach right.

E&E News
http://www.eenews.net/eedaily/2017/03/28/stories/1060052163
Staff awaits trump with trepidation
By Kevin Bogardus 3/28/17

Many U.S. EPA staff members are gritting their teeth for President Trump's visit today.

The president plans to visit the agency's Washington headquarters this afternoon to sign his long-anticipated executive order to boost energy production and target environmental regulations, including the Clean Power Plan.

Trump — who has proposed a massive 31 percent, or $2.6 billion, budget cut for EPA, which could result in 3,200 fewer jobs at the agency — is not a popular figure among its employees.

After his election last year, many EPA workers were upset, worried about the future of their jobs and the agency itself. On the campaign trail, Trump pledged to dismantle EPA. And last week in Kentucky, he said Administrator Scott Pruitt "would turn the EPA from a job killer into a job creator."

Consequently, gallows humor has become prevalent at the agency.

"Coming to EPA? Are you sure he's not going across the street to have lunch at Trump Hotel?" said one career EPA employee when told about Trump's visit to agency headquarters.

Across the street from EPA's William Jefferson Clinton Federal Building is the Trump International Hotel, where the president has already dined a few times since his inauguration.

That career employee predicted Trump would receive a chilly reception from staff, with many staying in their cubicles rather going to the president's signing of the executive order — if they're invited at all.

"There is going to be bewilderment and shock. Not a lot of excitement. Just pissed-off people," said the employee. "We're going to be at our desks. We'll not be going down there."

A presidential visit will also require heightened security. According to an internal email sent to agency employees yesterday and obtained by E&E News, the Secret Service and the Federal Protective Service will implement "multiple security measures" for the building, "and there will be an increased security presence at the Federal Triangle Complex."

With some entrances closed all day, employees will not be allowed on the first floor of the Clinton East building. The agency's mailroom and print shop will also be closed for the day.

In addition, some EPA employees working in an area facing the courtyard "must close window blinds beginning no later than 10:00 am (and remain closed all day)," said the email.

Security was likely as tight for President Obama's visit to EPA in January 2012. The mood then, however, was celebratory.

Back then, agency employees crowded into the Andrew W. Mellon Auditorium to cheer on the 44th president. Obama thanked workers for their dedication and said environmental protection and economic benefits can go hand in hand.

"I do not buy the notion that we have to make a choice between having clean air and clean water and growing this economy in a robust way," Obama said. "I think that is a false debate" (*E&E News PM*, Jan. 10, 2012).

Pruitt has offered similar sentiments as EPA chief. Nevertheless, it hasn't done much to improve relations between the administration's leadership and the agency's workers.

"Oh, God," said one former EPA official when told about Trump's visit. "There will be certainly a different dynamic than when Obama visited."

The ex-official added, "There is probably no agency and political leader that feel this hostile toward each other, including the CIA."

Trump of course visited the intelligence agency the day after his inauguration. Speaking about his inaugural crowd size and election victory before the CIA's Memorial Wall, Trump sparked criticism for his campaignlike speech.

The president's visit to EPA could lead to similar reviews. Asked if Trump's stopping by EPA headquarters to sign an order to roll back agency rules was a poke in the eye to employees, one union leader said it was.

"It definitely is. Otherwise, he would do this from the comfort of the White House," said John O'Grady, president of American Federation of Government Employees Council 238, which represents thousands of EPA employees. "I'm speechless. This is like someone's worst nightmare."

CNN
http://www.cnn.com/2017/03/27/politics/trump-climate-change-executive-order/
In executive order, Trump to dramatically change US approach to climate change
By Dan Mercia 3/28/17 7:38 AM

Washington (CNN) President Donald Trump will sign a sweeping executive order Tuesday at the Environmental Protection Agency, which looks to curb the federal government's enforcement of climate regulations by putting American jobs above addressing climate change.

The order represents a clear difference between how Trump and former President Barack Obama view the role the United States plays in combating climate change, and dramatically alters the government's approach to rising sea levels and temperatures -- two impacts of climate change.

A White House official briefed on the plan said Monday the administration believes the government can both "serve the environment and increase energy independence at the same time" by urging the EPA for focus on what the administration believes is its core mission: Clean air and clean water.

More important than regulating climate change, the official said, is protecting American jobs.

"It is an issue that deserves attention," the official said of climate change. "But I think the President has been very clear that he is not going to pursue climate change policies that put the US economy at risk. It is very simple."

Tuesday's order will initiate a review of the Clean Power Plan initiative, rescind the moratorium on coal mining on US federal lands and urge federal agencies to "identify all regulations, all rules, all policies ... that serve as obstacles and impediments to American energy independence," the official said.

Specifically, the order will rescind at least six Obama-era executive orders aimed at curbing climate change and regulating carbon emissions, including Obama's November 2013 executive order instructing the federal government to

prepare for the impact of climate change and the September 2016 presidential memorandum that outlined the "growing threat to national security" that climate change poses.

"The previous administration devalued workers by their policies," the official said. "We are saying we can do both. We can protect the environment and provide people with work."

The White House official went on to argue that the best way to protect the environment is to have a strong economy, noting that countries like India and China do less to protect the environment.

"To the extent that the economy is strong and growing and you have prosperity, that is the best way to protect the environment," the official said.

The executive order also represents the greatest fears climate change advocates had when Trump was elected in November 2016.

"These actions are an assault on American values and they endanger the health, safety and prosperity of every American," Tom Steyer, the president of NexGen Climate, said in a statement. "Trump is deliberately destroying programs that create jobs and safeguards that protect our air and water, all for the sake of allowing corporate polluters to profit at our expense."

Andrew Steer, CEO of the World Resources Institute, said that the executive order shows Trump is "failing a test of leadership to protect Americans' health, the environment and economy."

But as much as Democrats and climate advocates will decry it, Trump's executive order follows the President's past comments about climate change. Though Trump told The New York Times during the election that he has an "open mind" about confronting climate change, he also once called it a hoax.

"The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive," Trump tweeted in November 2012.

"I will also cancel all wasteful climate change spending from Obama/Clinton," Trump said in October 2016.

The changes, the official said, do not mean the Trump administration will not look to protect the environment any longer, the official said, but when pressed about the human impact on climate change and Trump's beliefs, the official was reluctant to say whether all government officials in the Trump White House believe humans cause climate change.

"I think there are plenty of rules on the books already. We will continue to enforce that provide for clean air and clean water. And that is what we are going to do," the official said. "The President has been very clear that he wants the EPA to stick to that basic core mission that Congress set out for it."

The changes also reflect the view of EPA Administrator Scott Pruitt, who routinely sued the organization he now leads during his time as the Attorney General of Oklahoma. In an interview with CNBC earlier this month, Pruitt argued incorrectly that carbon dioxide isn't the "primary contributor" to climate change, a comment that goes against most scientific research.

This executive order is also an attempt by the Trump administration to make good on its promise to bring more coal jobs back. The official said that Obama's regulations "were not helpful" to the coal industry and these reversals are the President honoring "a pledge he made to the coal industry."

"We are going to put our coal miners back to work," Trump said at a March 2017 event in Kentucky. "They have not been treated well, but they're going to be treated well now."

He added: "The miners are coming back."

Huffington Post
http://www.huffingtonpost.com/entry/trump-climate-executive-order-environmentalists_us_58d9ec2ae4b018c4606ae900
Environmentalists Vow To Fight Donald Trump's 'Dangerous,' 'Embarrassing' Climate Rollback
By Nick Visser 3/28/17, 5:47AM

Environmentalists and former White House officials on Monday slammed President Donald Trump's impending executive order that would undue much of the work his predecessor has done to combat climate change.

Trump was due to sign the Energy Independence Executive Order on Tuesday, which will target former President Barack Obama's signature Clean Power Plan and open up federal land to coal development. But environmentalists are not giving up without a fight and plan to protest the wide-ranging order that has been met with fierce criticism.

Gina McCarthy, a former administrator of the Environmental Protection Agency, called it a "dangerous," order that flies "in the face of EPA's mission."

"They want us to travel back to when smokestacks damaged our health and polluted our air, instead of taking every opportunity to support clean jobs of the future," McCarthy said in a statement. "This is not just dangerous; it's embarrassing to us and our businesses on a global scale to be dismissing opportunities for new technologies, economic growth, and US leadership."

EPA Administrator Scott Pruitt, a noted climate change denier, said Tuesday's order would "address the past administration's effort to kill jobs throughout the country" — a statement that couldn't be more different from the agency's stance just three months ago.

Janet McCabe, the former head of the EPA's Office of Air and Radiation, said the agency "has an obligation to address carbon pollution" and challenged Pruitt's recent assertion that carbon emissions were not the cause of climate change.

"Congress put the Clean Air Act in place to protect Americans from air pollution, and there is no doubt greenhouse gases are air pollution — the science makes that crystal clear and the Supreme Court has confirmed it as a matter of law," she said in a statement.

Environmentalists vowed to fight the effects of the rollback and planned a protest in Washington, D.C., for Tuesday evening.

"Trump's attack ignores reality — not just the reality of the climate crisis, but the reality that the clean energy economy is rapidly growing in both red and blue states, creating jobs and safeguarding our air and water," Sierra Club executive director Michael Brune said in a statement. "Trump can't reverse our clean energy and climate progress with the stroke of a pen, and we'll fight Trump in the courts, in the streets, and at the state and local level across America to protect the health of every community."

World Resources Institute president Andrew Steer said the Trump administration was "taking a sledgehammer to U.S. climate action," and with the signing of a pen, the president will "push the country backward."

"Make no mistake: This Executive Order will undermine people's health and the U.S. economy. It hands moral authority and global leadership over to others, leaving America behind," Steer said in a statement.

Economists and energy executives have already casts doubts on the aim of the executive order and Trump's plans to restore thousands of coal mining jobs.

"I really don't know how far the coal industry can be brought back," Robert Murray, the head of one of the countries largest coal mining companies, told The New York Times.

Washington Times
http://www.washingtontimes.com/news/2017/mar/27/paris-climate-treaty-faces-us-exit-after-donald-tr/
Trump's executive action on Clean Power Plan signals U.S. exit from Paris climate treaty
By Ben Wolfgang 3/27/17

President Trump's executive action Tuesday to begin unraveling the Clean Power Plan may also signal America's de facto exit from the landmark Paris climate treaty — former President Barack Obama's signature environmental achievement.

The Clean Power Plan, the first set of national limits on greenhouse gas pollution from power plants, is crucial to the U.S. meeting President Obama's pledge to cut emissions by at least 26 percent by 2025.

While Mr. Trump has yet to formally pull out of the Paris deal — a nonbinding agreement with no enforcement mechanisms other than public shaming — his move Tuesday essentially guarantees the U.S. won't meet the ambitious target.

"It was extraordinarily unlikely we would've met President Obama's Paris pledge under the best of circumstances. But clearly, if the Trump administration goes through with what's on the table so far, it will be impossible to meet the pledge," said Stephen Eule, vice president for climate and technology at the U.S. Chamber of Commerce's Institute for 21st Century Energy.

The Clean Power Plan, which was stayed by the Supreme Court last year and has not gone into full effect, calls for a 30 percent reduction in carbon emissions from the power sector by 2030, and would greatly shrink coal's share of electricity generation in the process.

That reduction is central to meeting the broader Paris goal, as are other regulations now under review, including fuel economy standards for automobiles.

Within the administration, there's an ongoing debate over whether to stay in the Paris deal or formally withdraw. The agreement itself remains highly controversial, not only because of the onerous measures the U.S. would have to put in place to meet its targets but also because it gives China, the world's biggest polluter, a free pass for the next 13 years.

Under Paris, China has to do virtually nothing until 2030, when the country says its greenhouse gas emissions will peak and then slowly begin dropping each year thereafter.

India, another major polluter, also faces no targets for more than a decade.

There's no indication that a decision on the Paris deal is on the immediate horizon, but top officials within the administration increasingly are speaking out. Even without technically disavowing the deal, it's becoming clear the White House has no intention whatsoever of honoring Mr. Obama's commitment.

"What was wrong with Paris was not just that it ... failed to be treated as a treaty, but China and India, the largest producers of CO2 internationally, got away scot-free. They didn't have to take steps until 2030," Environmental Protection Administrator Scott Pruitt told ABC News over the weekend.

"So we've penalized ourselves through lost jobs, while China and India didn't take steps to address the issue internationally. So Paris was just a bad deal, in my estimation," he said.

A senior White House official on Monday evening said it's "still under discussion" whether to leave formally the Paris agreement, and wouldn't elaborate on how the administration could possibly meet its commitment while eliminating rules to cut emissions.

In addition to the Clean Power Plan, the official also confirmed that Tuesday's executive order will eliminate Obama administration estimates on the "social cost of carbon," will end a federal moratorium on new coal leases and will take other steps to reduce regulations and promote American energy independence.

The order, however, is by no means the final word on the Clean Power Plan.

The EPA still must hold public hearings, accept public comments, consult with stakeholders and likely face numerous lawsuits in its effort to eliminate the Clean Power Plan altogether.

Specialists have said it will take at least one year, possibly longer, to remove it from the books completely.

Exiting the Paris deal is a different story. Because the agreement was never submitted to the Senate to be approved as a formal treaty, there's nothing stopping the administration from quickly ending U.S. participation.

Supporters of the Paris deal say the White House is sending the wrong signal to the rest of the world by approving new fossil fuel projects like the Keystone XL oil pipeline while backing down on emissions-reduction goals.

"The Trump administration says 'yes' to sending the dirtiest Canadian oil to Latin America and China after it crosses the American plains, but 'no' to providing American leadership as China and Latin America make historic commitments to the global agreement on climate change," Sen. Edward J. Markey, Massachusetts Democrat, said Monday.

Indeed, there would seem to be little reason for the rest of the world to accept U.S. leadership on climate issues if the administration abandons Paris.

"We lose any ability, any moral authority, to say to any other country, 'You have to clean up your act,'" said Christine Todd Whitman, the former Republican governor of New Jersey and EPA administrator during the George W. Bush administration.

But some analysts say the U.S. can retain a global voice on emissions even while undoing regulations, like the Clean Power Plan, that would hamper economic growth at home.

"It would be possible ... to keep our seat at the table while still making fundamental changes to our domestic regulations. This position is all the more reasonable in light of the fact that market forces are already advancing the ball toward reasonable greenhouse gas goals," said Scott Segal, a partner at Washington's Bracewell law firm who specializes in energy and environmental issues.

Washington Post
https://www.washingtonpost.com/national/health-science/trump-moves-decisively-to-wipe-out-obamas-climate-change-record/2017/03/27/411043d4-132c-11e7-9e4f-09aa75d3ec57_story.html?utm_term=.c54766528a9c
Trump moves decisively to wipe out Obama's climate change record
By Juliet Ellperin and Brady Dennis 3/27/17, 11:01PM

President Trump will take the most significant step yet in obliterating his predecessor's environmental record Tuesday, instructing federal regulators to rewrite key rules curbing U.S. carbon emissions.
The sweeping executive order also seeks to lift a moratorium on federal coal leasing and remove the requirement that federal officials consider the impact of climate change when making decisions.

The order sends an unmistakable signal that just as President Barack Obama sought to weave climate considerations into every aspect of the federal government, Trump is hoping to rip that approach out by its roots.

"This policy is in keeping with President Trump's desire to make the United States energy independent," said a senior administration official who briefed reporters on the directive Monday evening and asked for anonymity to speak in advance of the announcement. "When it comes to climate change, we want to take our course and do it in our own form and fashion."

Some of the measures could take years to implement and are unlikely to alter broader economic trends that are shifting the nation's electricity mix from coal-fired generation to natural gas and renewables. The order is silent on whether the United States should withdraw from the 2015 Paris climate agreement, under which it has pledged to cut its greenhouse gas emissions between 26 and 28 percent by 2025 compared to 2005 levels, because the administration remains divided on that question.

The order comes after several moves by Trump to roll back Obama-era restrictions on mining, drilling and coal- and gas-burning operations. In his first two months as president, Trump has nullified a regulation barring surface-mining companies from polluting waterways and set aside a new accounting system that would have compelled coal companies and other energy firms to pay more in federal royalties.

The administration also has announced it will reconsider stricter fuel-efficiency standards for cars and light trucks and has approved two major oil pipelines, Dakota Access and Keystone XL, that Obama had halted.

Accelerating fossil-fuel production on federal lands and sidelining climate considerations could lead to higher emissions of the greenhouse gases driving climate change and complicate a global effort to curb the world's carbon output. But Trump has repeatedly questioned whether climate change is underway and emphasized that he is determined to deliver for the voters in coal country who helped him win the Oval Office.

"He's made a pledge to the coal industry and he's going to do whatever he can to help those workers," the senior administration official said.

U.S. coal jobs, which number about 75,000, have been declining for decades. The official did not predict how many jobs might be spurred by this shift in policy.

Legal fight possible

The centerpiece of the new presidential directive, telling the Environmental Protection Agency to begin rewriting the 2015 regulation that limits greenhouse-gas emissions from existing power plants, will trigger a laborious rulemaking process and a possible legal fight.

The agency must first get permission from the U.S. Court of Appeals for the D.C. Circuit, where the rule is tied up in litigation, to revisit the matter. Then, agency officials will have to justify reaching the opposite conclusion of the Obama EPA, which argued it was technically feasible and legally warranted to reduce carbon pollution by about one-third by 2030, compared with 2005 levels.

"So, for the president, even if he would like to revoke the Clean Power Plan, he doesn't have legal authority to do that," said Jeffrey Holmstead, a partner at the Bracewell law firm who opposes the Obama-era rule. Holmstead, who headed the EPA's air and radiation office under President George W. Bush, said he thinks the agency can justify reversing the regulation. But "they have to justify why they have changed," he added.

While environmental groups decried Trump's move, mining officials welcomed it as an important course correction in federal energy policy.

"This rule was an unlawful attempt to radically transform the nation's power grid, destroying valuable energy assets and leaving our economy more vulnerable to rising power prices — all for an insignificant environmental benefit," said Hal Quinn, president and chief executive of the National Mining Association.

Environmentalists vowed to fight the executive order in court and press ahead with their goals on the state level.

David Doniger, director of the Natural Resources Defense Council's climate and clean-air program, said unwinding the Clean Power Plan will not happen quickly, no matter what the president wants. "Tearing the rules down require going through the same process it took to build them up," Doniger said. "We will make them face the music at every step."

Christopher Field, a professor at Stanford University's Wood Institute for the Environment, said in an email that the directive carries long-term risks, rather than immediate ones. "Some are risks from eroding the position of U.S. companies in the clean energy sector," Field said. "Others are from the loss of irreplaceable natural heritage that is put in jeopardy by ill-conceived policies."

The president will also instruct the Interior Department to rewrite a 2015 rule, currently stayed in court, that imposes restrictions on hydraulic fracturing on federal and tribal lands. The directive will also make it easier to flare methane in oil and gas operations on federal land, by triggering the review of a rule the Interior Department finalized in November.

More immediate actions

Other aspects of the executive order can take effect immediately, though it is unclear how quickly they will translate into greater coal extraction. One section overturns a 2016 White House directive to consider climate change when agencies conduct reviews under the National Environmental Policy Act, a sweeping law that informed any federal decisions that have a significant environmental impact.

Another provision instructs Interior's Bureau of Land Management to lift a freeze on federal coal leasing. That moratorium has been in effect since December 2015.

Tom Sanzillo, director of finance for the Institute for Energy Economics and Financial Analysis, said in an interview that the move "becomes a largely politically symbolic measure for right now" because other, lower-carbon sources of energy are out-competing coal. He noted that U.S. coal consumption has declined 27 percent since 2005, from 1.02 billion tons to 739 million tons in 2016, its lowest level in nearly four decades.

"They're not going to reverse the fundamental economic law here," Sanzillo said. "There's no market signal that's telling them they should be mining more coal."

Still, regulatory relief could make some coal firms, nearly 50 of which have filed for bankruptcy since 2012, somewhat more economically viable. Some of the sector's biggest companies — including Arch Coal, Peabody Energy and Alpha Natural Resources — are just now emerging from bankruptcy protection.

Ethan Zindler, head of U.S. research at Bloomberg New Energy Finance, said in an email that solar and wind are competitive with coal in some parts of the country and that natural gas ranks as the lowest-cost source of electricity generation overall. The sector that could suffer the greatest hit from the elimination of the Clean Power Plan is nuclear energy, which provides about a fifth of U.S. businesses' and households' power.

"Many of the 100 or so U.S. plants are aging, and approximately a third are economically uncompetitive today," Zindler said. Without stricter federal emissions limits, he added, "there may be little to stop the retirement of these plants in coming years and their replacement with a combination of gas, wind and solar."

Separately, Trump has instructed federal officials to abandon the practice of factoring in the impact of climate change — what is dubbed "the social cost of carbon" — in their policymaking decisions. That calculus, which is currently set at $36 per ton of carbon dioxide, aims to capture the negative consequences of allowing greenhouse-gas emissions to continue to rise. But some conservatives have criticized it as too sweeping.

Federal officials will return to the traditional cost-benefit analysis the George W. Bush administration adopted nearly 15 years ago, which has a much lower cost associated with carbon emissions.
As Trump seeks to scale back federal limits on greenhouse gas emissions, states and cities are likely to take on a larger role in charting the course forward.

An analysis by the Rhodium Group, an economic consulting firm, found that Trump's forthcoming executive order would slow the country's shift away from carbon-emitting sources of energy. It found after Trump's action, the United States would be 14 percent below its 2005 emissions levels by 2025, compared to 21 percent below that mark had current Obama-era policies remained in place.

Tim Profeta, who directs Duke University's Nicholas Institute for Environmental Policy Solutions, said regulators from more than half-dozen states in the Southeast are now talking about how to chart their own path forward. Having met for nearly three years, the group stopped discussing how to comply with the Clean Power Plan after November's election, but it is still talking.
"We are now talking about the evolution of the power sector in an environment of uncertainty," Profeta said in an interview. "We're seeing the beginning of states taking control of their destiny."

The Hill
http://thehill.com/policy/energy-environment/325977-what-to-watch-for-in-trumps-climate-change-order
What to watch for in Trump's climate change order
By Devin Henry and Timothy Cama 3/27/17, 4:01PM

President Trump will sign an executive order on climate change Wednesday, opening a new front in his battle against former President Obama's environmental legacy.

The action will address Trump's campaign promises and is expected to knock out the Obama administration's landmark climate rule, among other things.

Here are five things to watch when Trump releases the long-awaited executive order on Tuesday.

How far does he go?

The order is expected to be a broad assault on key aspects of Obama's climate change policies.

Trump is expected to order the Environmental Protection Agency (EPA) to formally consider repealing its Clean Power Plan, a rule created to cut power sector emissions. He is also likely to lift a moratorium on new coal mining leases on public land.

Sources told The Hill last week that the order would also target oil and gas drilling rules and the climate change metrics that Obama built into government environmental assessments and regulations, among other things.

Trump will also direct agencies to begin considering actions they can take to encourage energy production, according to Bloomberg.

Some parts of the order will take effect immediately, while others will take time. Trump can't immediately scrap the Clean Power Plan, for instance, as the EPA will have to conduct a formal rulemaking process that could take up to a year.

What will the battle lines be?

Don't expect environmentalists to immediately challenge Trump's action in court.

Lawsuits against the order are certain, but environmental advocates can't file them until the EPA proceeds through the regulatory process.

Much of the coming legal battle is likely to center on the Clean Power Plan. The rule is already at the center of a major lawsuit, with fossil fuel companies, industry groups and coal-friendly Republican states suing to undo the regulation.

That litigation will likely freeze after Trump signs the executive order but will restart again as the process moves forward.

Environmentalists are also likely to fight the cancellation of the coal moratorium, a policy Obama's Interior Department implemented in part to address complaints that the government was not doing enough to account for the climate impact of the fuel's use.

Will the Paris climate pact be mentioned?

The president's order is expected to tread lightly on one major piece of Obama's climate agenda: the Paris agreement.

The non-binding pact was negotiated in 2015 by nearly 200 countries, through the United Nations, with significant leadership from Obama. Each country pledged its own greenhouse gas emissions limits; Obama promised a 26 percent to 28 percent cut in the United States' emissions by 2025.

While Trump promised to "cancel" the accord during last year's campaign, he's been under pressure from some in his administration. In particular, his daughter Ivanka and her husband Jared Kushner — one of Trump's closest advisers — support the accord and convinced Trump to strike language from the order that would have been critical of it, according to The Wall Street Journal.

But while the United States might stay in the pact, Trump's executive order striking climate policies could make it difficult to meet the 2025 goal.

Trump may instead seek to reduce the United States' commitments under the agreement, something that has the support of Trump allies in Congress like Rep. Kevin Cramer (R-N.D.).

Will the order help jobs?

Trump and the White House have touted the order as being designed to help produce jobs in the energy industry.

"We can be both pro-jobs and pro-environment," EPA Administrator Scott Pruitt said Sunday on "This Week with George Stephanopoulos."

"The executive order will address the past administration's efforts to kill jobs across this country through the Clean Power Plan."

But there are indications the order won't pack quite the punch the White House is promising.

Undoing the power plant rules, for instance, is designed to help coal workers. But the industry's decline is much more closely tied to market forces like cheap, prevalent natural gas than federal regulations, something that even the coal industry acknowledges.

"I suggested that he temper his expectations," coal executive Bob Murray told The Guardian on Monday. "Those are my exact words. He can't bring them back."

The White House insists its new action will have an impact.

Asked if the order will bring back coal jobs, Pruitt said Sunday, "I think absolutely it will. It will bring back manufacturing jobs across the country, coal jobs across the country."

How will the White House unveil the order?

Trump is aiming to unveil the order with his traditional showman's touch.

The White House says Trump will go to EPA headquarters in downtown Washington, D.C., to sign the directive.

In addition to Pruitt, the administration may bring in coal miners to celebrate the signing, as Trump did when he signed legislation to undo the Interior Department's rule to protect streams from mining pollution.

Members of Congress, who have long looked to halt Obama's climate actions, are likely to look on as well.

The order could represent a major turning point in American energy policy, fulfilling several of the president's campaign promises.

The Hill
http://thehill.com/policy/energy-environment/326047-trump-to-undo-obamas-climate-change-agenda
Trump to undo Obama's climate change agenda
By Devin Henry 3/27/17, 11:00AM

President Trump will use an executive order on Tuesday to dismantle to the Obama administration's climate change agenda.

The order will compel the Environmental Protection Agency (EPA) to review the Obama administration's chief climate rule for power plant emissions, the 2015 Clean Power Plan, a White House official said on Monday night. The White House opposes that rule, signaling its eventual termination.

The action will order several other federal agencies to undo the previous administration's climate change work: it will tell the Interior Department to end a moratorium on new coal leasing on federal land, the official said, and the Obama administration's assault on methane emissions — outlined in early 2014 and overseen by Interior and EPA — will be ended, as well.

A major hydraulic fracturing regulation from the Bureau of Land Management will be reviewed under the order. It will also end President Obama's climate action plan, the main 2013 directive outlining the federal government's response to climate change.

Trump's Tuesday order will represent a reset of the federal government's policies on climate change. It will not address several major environmental rules issued during Obama term, including an update on ozone pollution or mercury

standards at power plants. But efforts initiated by Obama — who made addressing climate change a key goal of his second term — will disappear.

“There are plenty of rules on the books already, that we will continue to enforce, that provide for clean air and clean water and that’s what we’re going to do,” the White House official told reporters on Monday night.

“I think the president has been clear he wants the EPA to stick to that basic core mission that Congress laid out for it.”

One thing the order will not address is the United States’s involvement in the Paris climate deal, a global pact to cut greenhouse gases. Obama was a driving force behind that agreement, pledging a 26 percent to 28 percent reduction in U.S. emissions by 2025.

But the official said the administration has a "different view about how you should to address climate policies as the United States and we’re going to go in a different direction."

Trump doubts the broad scientific consensus — affirmed by the vast majority of climate scientists — that human activity contributes to and has exacerbated a warming trend around the globe.

He has stacked his administration with officials who agree with his views. EPA Administrator Scott Pruitt, for example, said earlier this month that he does not believe carbon dioxide is a “primary contributor” to global warming, a conclusion at odds with the scientific research of his own agency.

Trump's order will not nix the Obama administration’s 2009 finding that carbon dioxide is a threat to the United States, a formal conclusion that underpins federal rules on the matter.

"But the administration will interpret it differently than Obama did. That “endangerment finding,” Trump’s administration argues, relates only to carbon emissions from cars, not carbon emissions as a whole, and therefore does not apply to the power plant rules Obama issued.

The official said climate change is an “issue that deserves attention,” but there is no indication from the contents of the order that Trump will focus on it.

Instead, the White House is framing the order as one to help the U.S. economy -- something Republicans, Trump and others in his administration have said is threatened by climate regulations.

“Energy independence: that’s the goal,” the official said. “The president understands there’s a disagreement over the policy response and you’ll see that in the order tomorrow. We’re taking a different path."

Environmentalists have promised a strong response.

Groups have planned a protest on Tuesday night, an early sign that they will fight back against the changes.

"On the heels of the three hottest years on record, President Trump is reversing the biggest steps our country has taken to fighting climate change, League of Conservation Voters President Gene Karpinski said.

“Donald Trump may care more about corporate interests, but the people of this country care about a safe, clean and healthy environment and they will not let him get away with destroying it.”

Environmental lawyers have said they will pore over the regulatory review process in order to sue against it in the end.

"This order ignores the law and scientific reality," Trip Van Noppen, the president of the environmental law group Earthjustice, said in a statement.

"Dirty coal power is never coming back because it can't compete with clean energy and denial won't make climate change go away. Earthjustice will continue to defend clean air and progress on climate in court and out, and we will never back down from protecting our public lands."

The White House said it was preparing for a lengthy fight over the contents of the order.

"I bet a good deal that there will be litigation once the final review is undertaken," the official said. "It's going to take a while."

The action will rescind several other Obama directives issued by his administration.

An order asking federal agencies to consider climate impacts in normal environmental reviews will come off the books, and the administration will reconsider the "social cost of carbon" metric designed to assess the climate implications of government actions.

Other Obama policies — including those focusing on climate change adaptation and its impact on national security — will also come off the books.

The order will have federal agencies identify plans for expanding American energy production, something that will serve as a "blueprint" for the Trump administration's energy agenda.

The fossil fuel industry stands to benefit from the action. The coal sector, for instance, has lambasted the Clean Power Plan as a regulation designed to damage the industry, which produces a high-polluting fuel.

Oil and natural gas companies oppose the methane regulations as burdensome and duplicative, and they have fought them in court and in Congress.

But the order will not be a silver bullet, something even coal executive Bob Murray acknowledged this week.

"I suggested that he temper his expectations," Murray told The Guardian, noting market forces that have hurt his sector. "Those are my exact words. He can't bring [jobs] back."

InsideEPA
https://insideepa.com/daily-news/trump-order-requires-agencies-id-rules-stymie-energy-production
Trump Order Requires Agencies To ID Rules That Stymie Energy Production
By Abby Smith 3/27/17

President Donald Trump will sign a long-awaited executive order March 28 that a senior White House official says will begin to lay out a framework for the administration's energy and environment policy -- one that will prioritize energy production and eliminate climate or environmental policies that "put the U.S. economy at risk."

The forthcoming order "will look back and look forward," the official told reporters in previewing the order late March 27. The order, known as the "Energy Independence" executive order, will direct federal agencies to identify "all regulations, guidance and documents that serve as obstacles or impediments to U.S. energy production," the official said.

Agencies will be expected to come up with energy independence plans, which the White House will then review. "Those plans will serve as a blueprint for the administration going forward on energy policies," the official said.

Regarding climate change, the White House official suggested several Obama-era policies "don't reflect" Trump's agenda, and therefore will be immediately pulled back or subject to review.

The official indicated the administration wants to "take our own course and do" climate policy "in our own form and fashion."

Specifically, the order will target a wide range of Obama administration climate policies, largely mirroring what appeared in a draft summary of the order obtained by *InsideEPA/climate* and other news outlets.
The order will "initiate the review" of several regulations, including EPA's existing power plant greenhouse gas rule known as the Clean Power Plan and the companion rule for new sources. Both rules are currently subject to pending legal challenges in the U.S. Court of Appeals for the District of Columbia Circuit.

The document could also order the Department of Justice to ask the D.C. Circuit to hold litigation on the power plant rules in abeyance or remand the rules to the agency while administrative proceedings to rewrite them are underway.

The White House official said there is no timeframe associated with the review of the Clean Power Plan and other rules, but EPA Administrator Scott Pruitt "is ready to hit the ground running on it." The source also noted that the administration will have to go through the rulemaking process if it intends to rescind or revise the regulations and acknowledged there will likely be litigation over the end result.
Whether the process takes one, two or three years, "I don't know. It's going to take some time," the official said.

In addition, the White House official listed several other Obama-era policies that will undergo review -- including EPA's rule regulating emissions of the potent GHG methane from new oil and gas sources, as well as the Bureau of Land Management's (BLM) methane venting and flaring rule and its rule regulating hydraulic fracturing on public lands.

"All will be reviewed" based on "whether those reflect the policy priority at the beginning of the order," the official said, though the source did not specify what that priority would be beyond a focus on energy independence and "getting EPA back to its core mission."

NEPA Reviews

According to the White House official, the order will also rescind Obama White House Council on Environmental Quality guidance for how to account for climate impacts in National Environmental Policy Act (NEPA) reviews. "That guidance was widely opposed by a number of different industries," the official said, adding that the administration believes it goes "way beyond what NEPA requires."

The order will also target the Obama administration's social cost of carbon metric, and the related social cost of methane and social cost of nitrous oxide -- default values that agencies use to measure the benefits of rules that limit GHGs.

"The prior administration put out its own estimates, not in a very transparent fashion," the official said, adding the Trump administration believes the metrics violate "longstanding" Office of Management & Budget policy. Those metrics "will no longer stand," the source said.

In addition, the White House official said the order will target about six climate change-related executive orders and presidential memorandum from former President Barack Obama, including four orders related to climate adaptation and resilience, the 2013 memo putting forth the Climate Action Plan and a 2014 memo outlining a strategy to cut methane.

The order will also rescind the Department of Interior's moratorium on new coal leasing on federal lands.
The White House official said the order will not address how the Trump administration will proceed with the Paris Agreement, which the source said is "still under discussion."

It will also not address EPA's 2009 GHG endangerment finding, which underpins the agency's climate regulations and which many conservative groups have urged the Trump EPA to review. Just last month, the free-market Competitive Enterprise Institute asked EPA to review the GHG risk finding in a petition obtained by *Inside EPA*.

"Certainly if you look at the previous administration's" Paris Agreement pledge, "we have a different view about how you would address climate policy in the U.S.," the White House official said, adding that the Trump administration intends to go in a "different direction" but the emissions impact of that pathway is unclear.

The White House official emphasized that Trump "made a pledge" to help the coal industry. While it is true that such things like the low cost of natural gas and other market forces affect coal's success, "certainly government policy has a role, and to the extent he can have a beneficial effect, he's going to take it."

In addition, the White House official indicated the executive order would "lay out very clearly" how the Trump administration intends to approach climate policy. The source suggested the administration believes the most important factor is to "make sure you have a strong economy," noting that the United States has a "cleaner, healthier environment" than large developing countries like China.

The official also noted that the Trump administration will continue to enforce clean air laws that are "on the books" but will review "policies like the Clean Power Plan that we believe don't provide environmental protection." The source added that "whether it's clean coal, nuclear power, renewables . . . allowing all those to flourish is a good way to address the issue." -- *Abby Smith* (asmith@iwpnews.com)

Washington Examiner
http://www.washingtonexaminer.com/trumps-newest-order-looks-to-block-obamas-climate-legacy/article/2618606
Trump's newest order looks to block Obama's climate legacy
By John Siciliano 3/27/17 11:00 PM

President Trump will sign an executive order Tuesday to roll back the centerpiece of the Obama administration's climate change agenda, the Clean Power Plan, and cancel what Trump says are unnecessary rules on coal, oil and natural gas production that are harming economic growth.

The executive order is seen as central in meeting the president's campaign promises to help coal country rebound from the tens of thousands of job losses that the industry blames, in part, on restrictive environmental regulations.

A senior administration official told reporters on a call Monday that the order has the "twin goals" of both moving forward while also looking backward.

It "looks forward" by setting the stage for the "beginning strategy" in devising an energy policy framework for the nation, said the senior official. And it looks backward by eliminating regulations from the previous administration that hinder growth and energy production.

It will call on all agencies to conduct a comprehensive review of all rules to determine those that inhibit energy production, and report back to the White House in 180 days.

After that, the White House will sit down with the agencies to develop an energy "blueprint," the official told reporters.

The order will also direct the Environmental Protection Agency to review and, if necessary, redo climate regulations for existing fossil fuel power plants, called the Clean Power Plan, with the end goal of redacting the regulation. And, it will roll back climate regulations on new power plants, known as the New Source rule, which is called a "defacto ban" on building new coal-fired power plants in the country.

The clean coal technology required to meet the rule is cost prohibitive and not yet even commercially viable.

The rule directs the Justice Department to ask the D.C. Circuit Court of Appeals to hold in abeyance current lawsuits opposing the regulations. Nearly 30 states and hundred of groups, firms and companies are suing the agency over the power plant rules.

Rolling back the regulations would help keep coal power plants from prematurely closing down over the next decade. The review that EPA must do to comply with the Administrative Procedures Act could take years, as the official expects the review will be challenged in court.

In other areas, the rule takes aim at Obama-era regulations opposed by industry groups that are meant to control methane emissions from fracking wells.

Both the EPA and the Interior Department have regulations for essentially doing the same thing, limiting emissions of methane, which is a potent greenhouse gas that many scientists blame for causing manmade global warming through the burning of fossil fuels.

The methane regulations are part of President Barack Obama's broad climate agenda issued in 2013, called the Climate Action Plan. But the rule rescinds all six executive orders that make up the Climate Action Plan.

The order has faced weeks of delays because of complex legal questions regarding the Clean Power Plan and EPA climate rules, which are currently under review by the D.C. Circuit Court of Appeals.

The order is "legally complex," and the White House was being "very careful" due to the ongoing litigation, the official said.

He said EPA Administrator Scott Pruitt is "ready to hit the ground running" in conducting the climate rule at the agency. But he said it seems clear there will be litigation, which could take years to resolve.

Big environmental groups like the Natural Resources Defense Council and Sierra Club will likely initiate opposition in the courts to the executive order and its actions.

NRDC President Rhea Suh began ramping up support for her group's legal response to Trump's assault on EPA in November. Her group is already suing against Trump's approval of the Keystone XL pipeline on Friday.

Meanwhile, Sen. Ed Markey, D-Mass., an ardent supporter of steps to control climate change, plans to introduce legislation in direct response to Trump's executive orders on Keystone XL and the Clean Power Plan.

"President Trump didn't issue an executive order today, he issued a declaration of war on American leadership on climate change and our clean energy future," said Markey.

Markey said Monday that he plans to introduce a slew of bills, including one to transition to 100 percent clean and renewable energy by 2050, another to reform the federal coal leasing program, and a third to "block export of Keystone XL oil and refined product," while opening up offshore wind energy on the nation's coasts.

Mother Jones
http://www.motherjones.com/environment/2017/03/trump-executive-order-climate
Trump Just Released His Plan to Gut Obama's Climate Policies. It's Worse Than You Thought.
By Rebecca Leber 3/27/17 11:00 PM

President Donald Trump will issue his long-promised executive order rolling back federal government efforts to fight climate change Tuesday.

The wide-ranging order, which will be accompanied by other environmental directives, targets Obama-era policies across the government, including in the Environmental Protection Agency, the Department of Interior, and the Department of Defense. It directs the EPA to revisit the Clean Power Plan, which limits carbon pollution from power plants and was considered the center-piece of former President Barack Obama's climate policy. Additionally, Trump is asking the Justice Department to stop defending the plan in court.

The president will instruct agencies to rescind a moratorium on coal leasing on public lands; rewrite limits on methane emissions from the oil and gas industry; and ignore the EPA's current calculation on the costs of carbon pollution. There are also broad directives reversing an Obama initiative requiring that federal departments consider climate mitigation strategy and the national security risks of global warming.

One of Trump's more notable "Day One" promises is missing, however: The United States will remain in the landmark Paris climate accord for the time being—despite Trump's pledge to "cancel" it.

Still, environmentalists are furious. "This is not just dangerous; it's embarrassing to us and our businesses on a global scale to be dismissing opportunities for new technologies, economic growth, and US leadership," Obama EPA Administrator Gina McCarthy said in a statement.

Sen. Edward Markey (D-Mass.) called Trump's actions "a declaration of war on American leadership on climate change and our clean energy future" in his own statement.

Indeed, Tuesday's actions are just the start of a long fight over the federal government's role in confronting climate change. Undoing the regulations already on the books, from the Clean Power Plan to the methane rule, could take several years. And Trump will face fierce resistance throughout the protracted fight. Green groups are already threatening legal action.

EPA Administrator Scott Pruitt, White House Press Secretary Sean Spicer, and Trump himself have all stuck to a similar script while previewing the order. They insist it will create jobs and help the United States achieve energy independence (although the US wasn't "energy independent" before the Obama rules existed). At a recent Kentucky rally, Trump claimed the executive order would "save our coal industry." (It won't.)

On a press call Monday night, a senior White House official also stuck to that script. That is, until reporters asked him whether administration staffers who worked on the order accepted the science behind global warming and sea level rise—and the research showing that climate change makes extreme weather worse.

"I would like to see" that research, said the official, who spoke on background to reporters. "Send it to me."

Asked whether the president and his staff all believe in manmade climate change, the official stumbled, "Um...again I think it's not a controversial statement. The key question is the extent over what frame of time." Asked whether the official personally believed climate change is manmade, he said, "Yeah, sure I do. That doesn't say much does it?"

It actually says a lot. Trump and Pruitt have both at times dismissed climate science—Trump infamously called it a Chinese hoax. Environmental lawyers think these pronouncements could strengthen their lawsuits. "It is possible that statements of that sort will come back to haunt them," Richard Revesz, a New York University environmental law professor, said. "It would suggest they prejudge the science before consulting with scientists. There is a pretty high burden for departing from an existing rule."

Here's the rundown of some of what Trump's executive actions will do:

Gutting the Clean Power Plan

The Clean Power Plan was the Obama EPA's strategy for reducing carbon pollution from existing power plants 32 percent by 2030. Under this rule, states would have to submit plans to achieve customized emissions targets using a mix of renewables, natural gas, and energy efficiency. The Supreme Court put the rule on hold last year as attempts to block it wind their way through the court system, so the EPA's work on the program has ground to a halt.

Trump's order directs the EPA to revise the plan and review what it thinks is required under the Clean Air Act, which forms the basis for the power plant regulations. The moves will require an extensive public notice and comment period to justify any changes, and the administration has yet to make a timetable public.

Trump is instructing the EPA to revise the rule (and weaken it substantially)—rather than rescind it entirely—presumably because the Supreme Court told the agency in 2007 it must regulate carbon pollution if it finds carbon to be a threat to human health. The agency issued this so-called "endangerment finding" in 2009, and it was upheld in a 2012 appeals court case. As long as the EPA's finding that climate change poses a health danger remains in effect, the EPA is legally required to issue regulations based on the "best available science." While revoking the endangerment finding has long been a goal of some on the right, it would be a difficult feat that would likely involve convincing the courts that climate change is, as Trump contends, a hoax.

Adding more complication still, the DC federal court of appeals has yet to issue its opinion on the legality of the Clean Power Plan, after hearing the case on an expedited schedule last fall. As expected, Trump is now asking the Department of Justice to withdraw its defense of the plan.

Ignoring the Cost of Carbon

In 2007, a federal appellate court ruled that when performing a cost-benefit analysis on its fuel efficiency standards, the Bush administration had to account for the costs that carbon emissions inflict on society by contributing global warming and other problems. The court recognized that "while the record shows that there is a range of values [for the social cost of carbon], the value of carbon emissions reduction is certainly not zero."

Of course, translating the impacts of carbon emissions and climate change into an economic "cost" that can be measured in dollars is a complicated undertaking. Obama's EPA ultimately worked out a formula for tabulating these costs and used it as a basis for its climate regulations.

Trump's order directs the EPA to ignore this calculation.

Ending the Moratorium on Coal Leases on Public land

In January 2016, Obama ordered a moratorium on new coal leases on public lands until Interior could update its badly outdated leasing program. Trump is now directing the department to reverse that moratorium. Unlike the Clean Power Plan, which was a formal rule that can only be undone through a drawn-out process, Interior can act on this directive immediately.

When that happens, environmental groups are ready to fight back. Earthjustice expects this to be the first in a long series of legal battles over Tuesday's order. The group says it plans to file a lawsuit within hours of the agency's action.

"We expect to challenge any action that allows coal leasing to resume before [an] environmental review is completed that evaluates whether the federal coal leasing program should be reformed (or scrapped altogether) in light of its significant climate impacts and failure to generate a fair return for US taxpayers," Earthjustice attorney Jenny Harbine said.

Rolling Back Methane Restrictions

The Obama administration finalized a series of regulations toward the end of his presidency limiting methane emissions. Among them was an Interior rule limiting excessive flaring and venting from oil and gas operations on public lands. Like the Clean Power Plan, this change will have to go through a formal rulemaking process in order for Trump to undo it. Trump will also rescind Obama's broad strategy, released in 2014, for reducing methane emissions.

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Subject: E&E News: Koch Industries involved in Pruitt's confirmation, 4/26/17

E&E News
https://www.eenews.net/climatewire/stories/1060053580
Koch Industries involved in Pruitt's confirmation
By Niina Heikkinen 4/26/17

Koch Industries Inc. put its money behind the confirmation of U.S. EPA Administrator Scott Pruitt, according to new lobbying disclosure filings.
In the first months of the Trump administration, the multinational corporation spent $3.1 million lobbying lawmakers on Capitol Hill. Among the lobbyists' priorities was securing Pruitt's nomination as head of EPA. Koch Industries also worked to sway legislators on issues like the Clean Power Plan, carbon pricing, and legislation regarding renewable fuel and corporate average fuel economy standards.

The first-quarter public filing follows continued questions from Democratic lawmakers about the oil and gas industry's influence within the Trump administration, and on Pruitt in particular. Pruitt came under fire during the nomination process for his connections with the oil and gas industry as Oklahoma attorney general. He has also raised eyebrows among environmental groups for his focus on supporting the nation's coal industry through his recent "Back-to-Basics" tour as EPA administrator.

"It's no surprise that special interests would like to see him as our nation's chief environmental officer, but the American people deserve an EPA Administrator who will look out for all of us, not just the highest bidders," Sen. Tom Carper (D-Del.), ranking member on the Environment and Public Works Committee, said in a statement.

Carper added that Pruitt has a history of siding with industry over his constituents as Oklahoma attorney general, and had raised millions of dollars from oil and gas companies.

The first quarter of 2017 marked the most Koch Industries has spent on lobbying in a single quarter since the end of 2015, when the oil and gas conglomerate spent $3.2 million, according to filings posted on the Senate's Lobbying Disclosure Act Database. In addition to helping Pruitt get his seat, Koch lobbyists worked to fill "various positions" at EPA and the Department of Energy. The company also sought to influence "issues related to" appropriations for Interior, EPA and related agencies, as well as appropriations for energy and water development.

Sen. Sheldon Whitehouse (D-R.I.) expressed concern about the level of influence that Charles and David Koch might have on the administration.
"Donald Trump wants us to think he's draining the swamp, but these numbers tell a different story: He nominates appointees with deep ties to the worst special interests in Washington, and their corporate lobbyists parachute in to seal the deal," he said.

Officials with Koch Industries did not respond to requests for comment. An EPA spokesman framed the industry lobbying as part of a larger shift at EPA.
"Administrator Pruitt is working to end the past administration's practice of picking winners and losers in the energy sector, so of course he's getting support from organizations all over the country who want a clean environment and a strong economy," said John Konkus in an email.

The Center for Media and Democracy, along with *The Intercept*, first reported the Koch filings yesterday. CMD is in the midst of a legal battle with Pruitt for the release of his email correspondence with members of the oil and gas industry during his term as state attorney general.

"Scott Pruitt's confirmation was publicly supported by many groups that are financed by the Koch brothers," said Nick Surgey, research director at CMD. "The Kochs can surely not believe their luck to have one of their own at the EPA, taking a wrecking ball to environmental protections they have spent millions of dollars trying to destroy."

This isn't the first time Pruitt has been connected to the Koch brothers. On Jan. 12, the American Energy Alliance, founded by former Koch lobbyist Tom Pyle, joined the Competitive Enterprise Institute, which receives Koch funding, and other conservative groups in a letter to senators supporting Pruitt's nomination (*Greenwire*, Jan. 12).

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Subject: Washington Post: Trump officials turn to courts to block Obama-era legacy, 4/18/17

Washington Post
https://www.washingtonpost.com/business/economy/trump-officials-turn-to-courts-to-block-obama-era-legacy/2017/04/17/b825d732-1ba0-11e7-855e-4824bbb5d748_story.html?utm_term=.8ad982507468
Trump officials turn to courts to block Obama-era legacy
By Steven Mufson and Juliet Eilperin 4/17/17, 6:13PM

In his drive to dismantle President Barack Obama's regulatory legacy, President Trump has signed executive orders with great fanfare and breathed life into a once-obscure law to nullify numerous Obama-era regulations.

But his administration is also using a third tactic: Going to court to stop federal judges from ruling on a broad array of regulations that are being challenged by Trump's own conservative allies.

These cases were filed long before the election. Now, Trump administration officials, eager to flip the government position, want judges to put the cases on hold and give federal agencies time to revise or shrink the Obama-era regulatory regime.

Trump officials are also asking judges to keep any existing stays in place so that the contested regulations do not go into effect while the new administration considers its deregulatory strategy.

Much is at stake. The Environmental Protection Agency persuaded an appeals court to give it a chance to revise existing limits on street-level smog. The EPA also wants a court to let it rewrite the Clean Power Plan that Obama showcased at the 2015 Paris climate conference. And the Justice Department has sought to review a Department of Health and Human Services regulation that prohibits health-care providers from discriminating against people on the basis of gender identity, sex stereotyping or the termination of a pregnancy.

The legal strategy is a critical part of the administration's battle to reverse rules enacted in the final years of Obama's tenure.

For the Trump administration, getting the regulations back for reconsideration is also the surest way to stave off court rulings — especially those from liberal-leaning benches — that could hinder its ability to unwind rules adopted by the previous administration.

"If the courts uphold the previous administration, you still have the discretion to change things, but you've lost the argument that you were forced to do it or that the previous administration exceeded legal bounds," said Richard Lazarus, a law professor at Harvard University. He said that if Trump officials "were confident the courts would rule against" the Obama rules, "you wouldn't see them trying to hold cases in abeyance."

While some presidents — including Obama — have used this legal tactic in the past, Trump has expanded on the strategy.

When Obama took office, his administration asked federal courts to hold in abeyance at least half a dozen cases regarding EPA regulations and permits, saying it needed more time to decide whether to defend, revoke or revise the matters.

This time, however, EPA Administrator Scott Pruitt is calling on courts to send back rules that he had sought to overturn while serving as Oklahoma's attorney general before taking up his current post two months ago.

"The Trump team is trying a shortcut," said David Doniger, an attorney with the Natural Resources Defense Council who has been a leading defender of the Clean Power Plan. He said that because the Supreme Court has issued a stay in the power plan case, the Trump administration could effectively kill the plan with a prolonged reconsideration without going through the established guidelines for undoing a rule.

A tactic used before

But administration backers note that Democrats and Republicans alike have deployed this legal strategy.

"This is actually pretty routine," Jeffrey R. Holmstead, a lawyer at the Bracewell law and lobbying firm and an EPA official under President George W. Bush, said in an email. "When the Obama Administration [officials] took office, there were a number of Bush Administration rules being challenged that they didn't want to defend."

Lawyers on both sides say fundamental principles are at stake. Before Trump's election, lawyers for the states challenging the Clean Power Plan said that basic federalism meant that the federal government cannot compel states to undertake potentially costly energy programs. But lawyers for environmental groups say legislation adopted by Congress gives the federal government the power and obligation to set limits on emissions from power plants while paying attention to states' rights in designing plans to carry that out.

Some liberals have used federalist arguments to block Trump initiatives, such as the Trump administration's efforts to compel cities to implement immigration laws by threatening to cut their federal funding.

In some cases, the Trump administration has made a court case moot, such as when the Justice and Education departments rescinded guidance that informed school districts that they had to accommodate students' access to facilities based on their chosen gender identities.

In another case, the Justice Department asked the U.S. Court of Appeals for the 5th Circuit on April 4 for more time to respond to a lawsuit challenging the HHS regulation on health-care providers and discrimination.

The rule reflects the previous administration's interpretation of Section 1557 of the Affordable Care Act and was challenged by five states as well as several religious groups who said it represented federal overreach and should have included a carve-out for religiously affiliated medical providers.
A federal judge in Texas stopped two provisions of the rule, pertaining to gender identity and the termination of a pregnancy, from taking effect Jan. 1, while other aspects of it were allowed to go forward.

"Certainly, asking for additional time can be a very strong signal that the administration intends to change course on the subject of litigation," said Sarah Warbelow, legal director of the Human Rights Campaign. "That's very concerning to us."

The most frequent use of the strategy involves Obama-era environmental regulations.

The Clean Power Plan court battle is one of the highest-profile cases. The plan was issued by the Obama administration EPA on Aug. 3, 2015. A group of 28 states — led by Pruitt — sued to block the plan, and that case has been argued before a full 10-member panel of the liberal-leaning U.S. Court of Appeals for the District of Columbia Circuit. On Feb. 9, 2016, the Supreme Court issued a stay preventing the plan from going into effect while it makes its way through the appeals court.

Now the EPA wants the appellate court to hand the regulation back without ruling on it.

"They've filed a motion asking the ten-judge panel to hold the case in 'abeyance' — i.e., put it in the deep freeze — and thus not to issue its decision, until the Administration is done with its multi-year review and rulemaking," Doniger said. "They're saying whatever you do, don't decide anything."
Deadlines spur action

Pressing deadlines have pushed the administration to take action.

On April 11, the U.S. Court of Appeals for the District of Columbia Circuit granted the EPA's request to delay a long-scheduled April 19 hearing in cases challenging standards used to limit ground-level ozone, which is formed when emissions from industrial facilities and vehicles interact with sunlight and is linked to lung and heart ailments, including asthma.

"We are thankful to the court for granting our motion to postpone oral argument," EPA spokeswoman Liz Bowman said in an email, adding that it would allow the agency to ensure the rule's "broad implications . . . in light of President Trump's pro-growth agenda."

The EPA has also asked a three-judge appeals court panel to hold in abeyance a challenge to the agency's rules that new power plants meet carbon dioxide emissions standards. A Trump executive order directs the EPA to rewrite that standard. Oral arguments scheduled for April 17 were postponed.

The EPA rule designed to stop the pollution of tributaries of major rivers is in the Court of Appeals for the 6th Circuit. The Obama administration already filed a brief in the case, a roughly 170-page defense of the law and science that it said justified the rule. The case was postponed because the Supreme Court wanted to rule on a narrow jurisdictional issue. Here, too, the Trump EPA wants to "review and rescind or revise" the rule.

The Interior Department indicated in court filings in mid-March that it planned to withdraw a 2015 rule restricting hydraulic fracturing on federal and tribal lands, which had been stayed in court; less than two weeks later, Trump issued an executive order calling for the rule to be rewritten.

While some departments, such as the EPA and Interior, have asked the courts to return contested rules to them so they can take a second look, others — including the Labor Department, which still does not have a secretary in place — have not.

Many business officials, who have challenged some of the Obama-era rules, said they support the new administration reclaiming the regulations.
"If the courts rule in favor of the rule that was issued [under Obama], it would be allowed to go into effect," said Dan Bosch, senior manager of regulatory policy for the National Federation of Independent Business, in an interview.

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Subject: Washington Post: Trump said he would 'cancel' Paris climate deal. Now the White House is having second thoughts., 4/26/17

Washington Post
https://www.washingtonpost.com/news/energy-environment/wp/2017/04/26/trump-said-he-would-cancel-paris-climate-deal-now-the-white-house-is-having-second-thoughts/?utm_term=.a0871ff773ce
Trump said he would 'cancel' Paris climate deal. Now the White House is having second thoughts.
By Chris Mooney and Juliet Eilperin 4/26/17, 1:39PM

Key officials will meet at the White House on Thursday to discuss whether Trump should make good on his campaign promise to "cancel" the Paris climate agreement, or allow the United States to remain a party to the global pact — confronting head-on an issue that has divided the administration and raised concern in the international community.

The meeting will bring together officials with sharply opposing views about the administration's position on the historic agreement, signed by nearly 200 countries, which Trump as a candidate promised to cancel.

Secretary of State Rex Tillerson and senior adviser Jared Kushner, who may also participate, support remaining in the agreement.

Other attendees such as Environmental Protection Agency Administrator Scott Pruitt and Energy Secretary Rick Perry are opposed. Pruitt has publicly called on the United States to exit the agreement. Perry has suggested renegotiating the deal, but it is unclear how that can be accomplished.

White House Chief of Staff Reince Priebus will be at the meeting, and chief strategist Stephen K. Bannon may also participate.

Officials plan to discuss multiple scenarios, according to people who have been briefed on the matter but spoke on the condition of anonymity to discuss internal deliberations.

These will include pulling out of the voluntary agreement, or remaining part of the U.N. Framework Convention on Climate Change. Those who advocate staying in suggest the administration can scale back the amount of foreign climate assistance the United States has pledged to provide under the deal, and push countries such as China and India to commit to deeper emissions reductions. Opponents argue that that strategy is unrealistic.

The Trump administration has been under pressure to define its position on the Paris agreement ahead of upcoming international meetings, including of the eight-nation Arctic Council in Fairbanks, Alaska, and the G-7 in Italy, where international partners will inevitably be asking questions and seeking to adopt statements about it.

White House press secretary Sean Spicer has said that the administration will make up its mind about Paris "by the time of the G7 Summit, late May-ish, if not sooner."

The much-anticipated meeting had been put off last week after several top Trump officials traveled with the president to Wisconsin.

The internal administration debate about the U.S. position toward Paris was echoed on Capitol Hill on Tuesday where Rep. Kevin Cramer (R-N.D.), who served as Trump's energy adviser during the campaign, convened a panel to debate the merits of staying in, or departing from, the agreement.

The event showed surprising support for the "stay" position, including from some conservatives.

Cramer said at the start of the meeting that he had been a Paris opponent, but had been swayed by Tillerson's argument that there are things to be gained from the United States maintaining a "seat at the table."

"The longer I think about it, the more I've spoken about it to people, the more convinced I am that there's a lot of upside to staying in if we do this right," Cramer said. In particular, he said he thinks the United States could wield more influence.

Scott Segal, a lawyer with Bracewell LLC, argued that there was no contradiction between Trump's plans domestically to roll back the Clean Power Plan and staying in the Paris accord.

"While Paris does encourage forward momentum to addressing our national contributions … it does not require a particular regulatory outcome. For example, it does not require the Clean Power Plan," Segal said.

However, Christopher Horner, a lawyer with the Competitive Enterprise Institute, argued that environmentalists would use the United States' participation in the deal in lawsuits to force climate actions, and that the ongoing negotiations would provide repeated opportunities for the rest of the world to criticize the United States for its overall carbon output.

"There are many rationalizations, we're hearing more every day, for President Trump breaking his promise," Horner said. "I think they are rationalizations, they aren't reasons."

One thing is clear: If the Trump administration does stay in the Paris accord, it seems unlikely that it would also be able to stick with the United States' current pledge under the agreement to cut its emissions 26 to 28 percent below 2005 levels by 2025.

The administration has set about dismantling many key Obama policies that made that pledge possible, and the economic consulting firm Rhodium Group has estimated that the elimination of those policies would mean the United States would cut its emissions by 14 percent by 2025 compared to 21 percent if they stayed in place.

So the Trump administration would have to revise that pledge downward, an act that surely would trigger international opprobrium. The Paris accord is aimed at getting countries to increase their ambition on emissions, not decrease it, over time.

But the U.S. could nevertheless do so under the bottom up, nonobligatory structure of Paris, said Keith Benes, a former State Department attorney who is now a fellow at the Columbia University Center on Global Energy Policy and who also spoke at Cramer's event.

"Nothing prevents the U.S. or any other country from communicating a different goal for emissions reductions," Benes said.

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Subject: Politico: Carper slams talk of outsourcing EPA water rule, 4/19/17

Politico
https://www.politicopro.com/agriculture/whiteboard/2017/04/carper-slams-talk-of-outsourcing-epa-water-rule-086443
Carper slams talk of outsourcing EPA water rule
By Annie Snider 4/18/17, 4:25PM

The top Democrat on the Senate Environment and Public Works Committee is calling on EPA Administrator Scott Pruitt to disavow any discussions among some industry groups about whether the agency could hire private lawyers to rewrite the Waters of the U.S. regulation.

"I urge you in the strongest possible terms to disavow this reported industry plan, if true, and recommit yourself to ensuring that EPA's budget and workforce are maintained at levels necessary to perform its vital mission of protecting human health and our environment," Sen. Tom Carper (D-Del.) said in a letter.

The letter comes after POLITICO reported that some industry groups with close ties to Pruitt are exploring whether EPA could outsource work on the contentious regulation.

Asked about the issue, EPA spokeswoman Liz Bowman said: "To my knowledge, we are not contracting with an outside firm at this time for WOTUS."
Multiple industry sources said the discussion was fed by the fact that key positions at EPA are sitting empty, with no moves yet by the Trump administration to fill them. But Carper said that wasn't a sufficient reason for EPA to "devolve its regulatory obligations to industry."

"I question the legal validity of allowing industry to assist the agency in writing a rulemaking proposal, and consider it an utter and complete abdication of EPA's responsibility to protect the water and people of this country," he wrote, requesting a spate of documents and information from Pruitt on the issue.

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CC: So, Katherine [so.katherine@epa.gov]
Subject: Buzzfeed News: Here's why Trump probably won't ditch the Paris climate deal, 4/18/17

Buzzfeed News
https://www.buzzfeed.com/peteraldhous/trump-and-the-paris-deal?utm_term=.jeVWayxOa#.pnpv5JB85
Here's why Trump probably won't ditch the Paris climate deal
By Peter Aldous 4/18/17

As agenda items go, the future of the planet is a biggie. And that's arguably what's on the table in the White House this week, as President Trump's senior advisors will reportedly debate whether the US should withdraw from the historic Paris agreement on climate change.

On the campaign trail, Trump repeatedly vowed to cancel the December 2015 deal, under which more than 190 nations pledged to reduce their emissions of greenhouse gases. But within the Trump administration, there's a big split on the issue.

The "keep the deal" camp is led by Trump's son-in-law Jared Kushner and Secretary of State Rex Tillerson, according to *Politico*, which last week reported that a showdown meeting of senior advisers would take place as early as today. National Security Adviser H.R. McMaster is also reportedly leaning in favor of staying in the climate accord. The "leave" faction is headed by Environmental Protection Agency head Scott Pruitt and chief strategist Steve Bannon.

It's already clear that the US is not going to meet its Paris pledge to cut emissions by more than 26% from 2005 levels by 2025. Almost half of that target depended on the Obama-era Clean Power Plan. This would have slashed electricity generation using coal, but was ditched by a Trump executive order signed late last month.

Adding in other policies on limiting emissions that are now dead on arrival, the US is probably on course only to cut its emissions by about 6% by 2025, according to calculations run by Marc Hafstead of Resources for the Future (RFF) in Washington DC.

"Really the only way we could get back to 26% would be if states, cities, and businesses were to do all of the work — which seems incredibly unlikely," Hafstead told BuzzFeed News.

That alone won't please other signatories to the Paris deal. But walking away from the accord entirely would raise tensions to another level.

"The greatest international reaction would be around full-scale withdrawal from the agreement," David Waskow, director of the International Climate Initiative at the World Resources Institute in Washington DC, told BuzzFeed News.

There are pragmatic reasons for the Trump administration to stay in the agreement even as it allows the US pledge on emissions reductions to slide. In future meetings, the deal's signatories will discuss arrangements for investing in clean technology for the developing world. And if the US isn't a party to the Paris agreement, it will have no say in how these and other policies are set up.

"If you're Goldman Sachs, you might might like to have your home country involved," Raymond Kopp, a senior fellow with RFF, told BuzzFeed News.

That's a telling reference, given that the investment bank's former president Gary Cohn, now head of Trump's National Economic Council, has reportedly become a key figure in the administration, while Bannon's star has waned.

What's more, the Paris agreement was never intended to provide binding targets, so leaving would achieve little other than antagonizing other countries.

"My expectation is that they're going to stay inside and they're going to adjust the pledge," David Victor, director of the Laboratory on International Law and Regulation at the University of California, San Diego, told BuzzFeed News. Pulling out of such a flexible agreement would be like "poking everyone in the eye with a stick," he added.

Still, the fact that the US isn't going to meet its current pledge will make a big difference to what the Paris deal can achieve.

To avoid the worst consequences of warming, climate scientists have argued that the rise in global temperatures should be kept within 2 degrees Celsius of the pre-industrial average by 2100. Even with the Obama administration's pledge, the planet was poised to warm by 3.3 degrees C, according to Climate Interactive, a nonprofit that calculates the effects of climate policies, working closely with scientists at MIT.

The Trump administration's policies are poised to warm the planet by a further 0.3 degrees C, Drew Jones, co-director of Climate Interactive, told BuzzFeed News. Another fear is that other countries will now also let their targets slide.

"That puts us back on a trajectory of 4 to 4.5 degrees C of warming, which is likely to be catastrophic," John Sterman, director of the MIT Sloan Sustainability Initiative, told BuzzFeed News.

Victor is optimistic that other nations will hold firm, however. China and India, he said, want to reduce reliance on coal to reduce crippling air pollution. The European Union, meanwhile, is struggling to meet its stated target of reducing emissions at least 40% below 1990 levels by 2030. But with environmental cooperation seen as one of the successes of the often troubled European project, Victor doesn't expect to see a major retreat.

"My guess, if anything, is that they're going to redouble their efforts," he said.

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Subject: E&E News: Today could expose strengths, and weaknesses, in Cabinet, 4/27/17

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E&E News
https://www.eenews.net/climatewire/2017/04/27/stories/1060053678
Today could expose strengths, and weaknesses, in Cabinet
By Jean Chemnick 4/27/17

Today's meeting of top officials in the White House situation room could shed light not only on the fate of U.S. participation in the Paris Agreement but on which Trump administration players have the most influence with their boss.

The meeting brings together Cabinet members and advisers who are divided on whether President Trump should follow through on his promise to "cancel" the deal.

While much has been made of the rising influence within the White House of "globalists" like Trump's son-in-law Jared Kushner, who is said to favor the deal, over nationalists, like adviser Steve Bannon, Cabinet members on hand today have equally diverse views.

Secretary of State Rex Tillerson is the senior U.S. diplomat, but he has said nothing about this particular multilateral agreement since his confirmation in January.

"As you know, the review is ongoing with respect to the Paris Agreement. We're looking at it still," said a senior State Department official yesterday.
Bloomberg reported Tuesday night on a leaked draft memo circulating within the State Department arguing that Paris imposes few burdens on the United States. The document stops short of recommending that Trump remain in the deal, and it's unclear whether that document was intended to inform the secretary or whether it might represent his views. He said during the confirmation process that the United States could benefit from retaining a "seat at the table" in climate negotiations.

While Tillerson hasn't voiced an opinion publicly on Paris since assuming his new role, he may have raised it with Trump. The former Exxon Mobil Corp. CEO meets frequently with the president behind closed doors, and the State Department official said Paris has been featured in some of those conversations.

"I can't speak definitively whether this has been a frequent topic, but he meets with the president, sometimes multiple occasions during any week, and I'm sure it's come up in some way, shape or form on multiple occasions," said the official.

Sen. Ben Cardin (D-Md.) told reporters at a briefing yesterday that Tillerson has told him he expects to be Trump's top adviser on Paris.
"He's the key point person in the administration on this issue," said Cardin, the senior Democrat on the Senate Foreign Relations Committee. "That's what he tells me."

Cardin said U.S. EPA Administrator Scott Pruitt, who will also attend this afternoon's meeting, has deferred to Tillerson in conversations with him. But unlike Tillerson, Pruitt has not been shy about making his own opposition known, saying in an interview with "Fox & Friends" earlier this month that the United States should exit the agreement because it's a "bad deal."

The former Oklahoma attorney general, who pitted himself for years against EPA regulations before Trump appointed him to head the agency, has said it will make it harder to dismantle greenhouse gas rules if the United States is a party to a U.N. agreement that describes emissions as a dire threat.

Pruitt wants a 'kill shot'

Rep. Kevin Cramer (R-N.D.) said at an event Tuesday night that Pruitt brought that argument up again this week during a meeting with electric power cooperatives at EPA headquarters.

Cramer said Pruitt was particularly anxious to have a "kill shot" at the Clean Power Plan, which Trump has set about repealing but which will be the subject of extensive litigation.

Paul Bodnar, the White House National Security Council's former climate chief, said he was surprised at how vocal Pruitt has been on Paris. Trump is set to make his own announcement on the deal by the end of May and has said he is "studying" the issue.

"It's unusual to have a Cabinet secretary out in public there lobbying the president and his Cabinet colleagues on an undecided issue," said Bodnar, who is now with the Rocky Mountain Institute. He added that "being vocal probably magnifies Pruitt's influence in this media-centric administration. But it could also be a sign that he's about to lose the debate."

Cramer, who has hinted at support for remaining in the deal, seemed to dismiss Pruitt's position that U.S. participation in Paris could arm environmental litigants. The congressman said he was more convinced that staying in Paris was the right move after hosting the Tuesday panel in a House office building, though he favors weaker emissions commitments.

Cramer called the administration's public airing of the Paris decision "kind of noble."

But Robert Stavins, director of the Harvard Environmental Economics Program, said Tillerson's relative absence from the public debate over Paris might be a strategy learned from his decades in the private sector.

"My assumption is that Mr. Tillerson, being a successful former CEO — who operates, like all successful CEOs, not on the basis of ideology but on the basis of evidence — remains supportive of the USA remaining a party to the Paris climate agreement," he said.

Companies ranging from BP PLC to Google have come out in favor of the deal, arguing that U.S. influence over its direction would benefit American businesses. "As a corporation man, however, he also understands and observes hierarchy, and so I would not expect him to make public statements about his position, but to voice it only privately, such as to the president," Stavins said.

Tillerson appears to have an ally in Energy Secretary Rick Perry, who said this week that he would not urge a Paris exit. But other Cabinet members have been more circumspect. Commerce Secretary Wilbur Ross said Tuesday: "It's really outside my area."

"I'm having enough difficulty dealing with the trade issues rather than poaching on other people's territory," said Ross, whose agency overseas climate science work at the National Oceanic and Atmospheric Administration.

White House deputies gathered Tuesday to lay the groundwork for today's meeting, which was rescheduled from earlier in the month. It's unclear whether it will produce a single recommendation for the president or a menu of options. Trump is expected to make the final call.

"It would be welcome news if the president would announce the United States will continue to sit at the table and will continue to work with the international community so that we can all take responsibility," Cardin said yesterday.

He added that during a Monday meeting with U.N. ambassadors in Washington, several of them brought up the Paris Agreement with him and Sen. Lindsey Graham (R-S.C.).

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Subject: E&E News: EPA 'disregarded' Army Corps' WOTUS concerns – ex official, 4/27/17

E&E News
https://www.eenews.net/eedaily/2017/04/27/stories/1060053666
EPA 'disregarded' Army Corps' WOTUS concerns – ex official
By Ariel Wittenberg 4/27/17

Senate Environment and Public Works Committee members battled along party lines yesterday over the contentious Obama administration rule aimed at clarifying what waterways and wetlands get automatic Clean Water Act protection.

Republicans sought to undermine the Clean Water Rule's scientific and legal underpinnings while Democrats defended the rule with a 2006 opinion in *Rapanos v. United States* by Supreme Court Justice Anthony Kennedy on which it was based.

A key Republican witness was retired Army Corps of Engineers Maj. Gen. John Peabody, who wrote internal memos in 2015 saying the agency had been "marginalized from substantive participation" while the rule was being finalized in 2014 by political appointees and U.S. EPA (*Greenwire*, July 27, 2015).
Peabody told the committee that EPA "completely disregarded" Army Corps career staffers' "serious and significant concerns with the viability of the rule from a factual, scientific, technical and legal basis."

Chairman John Barrasso (R-Wyo.) seized on Peabody's comment and bore in: "Is it true," he asked, "that the Army Corps was really cut out of the process and that you asked that the corps' name be taken out of the technical analysis?"

Peabody: "The corps did not believe at that time ... that our judgment and experience was adequately included into the rule."

When Sen. Mike Rounds (R-S.D.) asked for examples of where EPA split from the corps, Peabody pointed to how the rule — which is also called Waters of the U.S., or WOTUS — treats "geographically isolated wetlands."

While the regulation, which has been stayed by a federal court pending litigation, has broad categories of waterways that would be automatically included in or excluded from Clean Water Act jurisdiction, isolated wetlands would be considered on a case-by-case basis.

To be protected under the Clean Water Act, isolated wetlands would have to meet two requirements. First, EPA and the Army Corps would have to meet criteria set up by Kennedy's 2006 opinion that prove the isolated wetlands have a "significant nexus" to traditionally navigable waters. The justice wrote that such wetlands lead to the larger waterway by surface flow or chemical or biological connections. The isolated wetlands would also have to be located either within the 100-year floodplain of a traditionally navigable water or within 4,000 feet of one.

Peabody said that while he believes EPA included those distances to "provide clarity," they could not be scientifically supported.

"The challenge is that under the 'significant nexus' standard, which legal counsel told me is the overriding standard, you cannot have a clear distinction, such as a fixed distance not supported in underlying science," he said. "I was concerned that made the rule legally vulnerable."

While Republicans used Peabody's criticisms to show the rule was — as Barrasso put — based on an "arbitrary number," Peabody's 2015 memo suggests it may be too restrictive.

"The Corps believes that the 4,000-feet limit on jurisdiction would cause significant adverse environmental effects as a result of the loss of jurisdiction over a substantial amount of jurisdictional 'waters' based on the Corps' experience in implementing the [Clean Water Act] 404 program and performing the majority of jurisdictional determinations under the [Clean Water Act]," Peabody's memo states.

The Trump administration is trying to repeal and replace the regulation. To do so, the administration would need to crack the scientific and legal basis for the Obama rule (*Greenwire*, April 20).

'That is the law'

Democrats focused yesterday on defending WOTUS's legal justification.

The *Rapanos* case was famously messy and resulted in a muddled 4-1-4 split decision. At issue was Michigan landowner John Rapanos' bid to develop a property that was designated a wetland, with EPA seeking to bring civil and criminal enforcement actions because he didn't have a permit.

Kennedy's stand-alone opinion agreed with the conservatives that Rapanos was in the right, but he disagreed with them about the scope of the Clean Water Act. He stated that waters must have a "significant nexus" to navigable rivers and seas, which could include not just surface connections but also biological or chemical ones.

Conservative Justice Antonin Scalia, who found in Rapanos' favor, argued for a more restrictive view of federal jurisdiction for himself and the three other conservatives, Chief Justice John Roberts and Justices Clarence Thomas and Samuel Alito. The four liberal justices argued for a far more expansive vision. Scalia died last year.

While federal courts have agreed that Kennedy's opinion is the overriding one, the Trump administration has said it wants to replace WOTUS with a regulation based on Scalia's opinion in the same case.

During the hearing yesterday, Sen. Sheldon Whitehouse (D-R.I.) attempted to call out Republicans' favoritism for Scalia during an exchange with EPA's former deputy assistant administrator for water, Ken Kopocis.

Whitehouse asked Kopocis about how the EPA should treat someone "dumping pollutants" into a hypothetical, seasonal stream where water only flowed after a large rainstorm.

"If a foreseeable rain is going to wash a known pollutant into navigable waters, do you think a rule that failed to regulate that would pass the significant nexus test?" he asked.

"No, sir, it would not," Kopocis replied. "That concept is specifically rejected by Justice Kennedy, who said it made little sense."

Whitehouse responded: "So, a lot of the complaining about the WOTUS rule here is actually complaining about the 'significant nexus' test, but that is the law."

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InsideEPA
https://insideepa.com/daily-news/industry-gop-seek-allay-pruitt-fears-paris-undercuts-cpp-rollback
Industry, GOP seek to allay Pruitt fears that Paris undercuts CPP rollback
By Abby Smith 4/26/17

Industry and Republican officials are seeking to allay EPA Administrator Scott Pruitt's concerns that continued United States participation in the Paris Agreement would undermine his efforts to roll back key Obama-era climate rules like the agency's power plant greenhouse gas limits -- arguing that the global pact does not dictate any particular regulatory program.

“While Paris does encourage forward momentum to addressing our national contribution for emissions, it does not require the Clean Power Plan (CPP). It does not require an endangerment finding under the Clean Air Act. In fact, I'll let you in on a little secret, it doesn't even require a Clean Air Act,” said Scott Segal, an attorney with Bracewell who represents a group of coal-heavy utilities known as the Electric Reliability Coordinating Council.

“You could be free to repeal, rescind, reform . . . the Clean Power Plan without running afoul of the obligations of Paris, such as they are,” he added during an April 25 event on Capitol Hill.

The arguments are aimed at countering a key concern of Pruitt, who is part of a small but vocal bloc in the Trump administration that has publicly urged President Donald Trump to leave the Paris Agreement.

While Pruitt has not publicly stated the concern, speakers at the event who have spoken to the administrator say he is concerned that continued participation could complicate his ability to roll back or weaken the CPP and other climate rules.

Although Pruitt has publicly called for the United States to abandon the deal, a larger group of White House officials and Cabinet members backs staying in the deal but offering a weaker national GHG target. They point to a range of rationales, including that the United States could make the deal friendlier to fossil fuels and avoid significant diplomatic repercussions.

Administration officials plan a high-level meeting April 27 to develop a formal recommendation or a range of options on the issue to give to Trump. The administration says it will announce a decision by a self-imposed deadline of May 26, the start of the G7 leaders' summit in Italy.

But so far, the administration's stance on the issue is muddled. While Trump in a March executive order took direct aim at the CPP and other major climate rules, the order was silent on Paris, despite a campaign pledge to “cancel” the deal.

The debate over whether to stay in the Paris deal has already sparked a significant split among key Trump supporters. Many coal producers oppose staying in the deal, though utilities and the oil and gas sector generally favor staying in. Republicans on Capitol Hill are also split on the issue.

Reduces EPA 'Latitude'

Conservative and free market groups, who are lobbying hard to exit the deal, say Pruitt's fears are warranted because supporters of stringent rules could offer legal arguments that U.S. participation in Paris requires EPA to keep its existing regulatory framework.

"Scott Pruitt is correct. This drastically reduces the latitude of what EPA can do to get out of the Clean Power Plan, the endangerment finding more so," Chris Horner of the Competitive Enterprise Institute (CEI), said.

Segal and Horner spoke at a forum hosted by Rep. Kevin Cramer (R-ND), a former Trump campaign energy adviser who had urged a swift departure from Paris but is now all but supportive of staying in the deal, assuming the adoption several fossil fuel-friendly "conditions."

Weighing against Pruitt and other Paris critics, a recent internal State Department memo obtained by *Bloomberg* makes similar points about how remaining in the deal would not complicate efforts to dismantle domestic climate rules.

"The agreement does not dictate any particular domestic measures a party must take to achieve its" national emissions pledge, the three-page memo says, with the report adding it was circulated in advance of this week's meeting.

The memo appears to reflect a growing consensus in the administration to stay in the Paris Agreement, while replacing the Obama administration's GHG target with a weaker goal that does not depend on an EPA regulatory framework.

Most recently, Energy Secretary Rick Perry told a Bloomberg New Energy Finance summit April 25 that he would not advise Trump to "walk away" from Paris but instead to "renegotiate" its terms.

Pruitt and White House chief strategist Steve Bannon remain outliers. For example, *Politico* reported the Pruitt recently successfully urged board members of the National Mining Association to push for a Paris departure, which the group plans to do.

In interviews, he has called Paris a "bad deal" that the United States should exit.

At the April 25 forum, Cramer said he had just come from a meeting with Pruitt, where the administrator "didn't miss the opportunity to make his legal argument" regarding the Paris deal. But Cramer also said Pruitt did not go into "depth" about the reasoning behind his concerns.

"Clearly Administrator Pruitt wants a kill shot on the Clean Power Plan," Cramer told reporters after the forum. His sense of Pruitt's concerns is, "why would we give the Sierra Club one more thing to sue over?"

Nonetheless, Cramer appeared satisfied by comments from Segal and others that EPA's deregulatory push is not hampered by continued U.S. involvement in the Paris deal.

"You might have noticed when I articulated it, I referenced: Is this a legitimate legal argument or is it a rhetorical one? I think the consensus is that it's a bit more rhetorical than it is legitimate," he said. He noted that environmentalists including the argument in lawsuits over EPA's rollbacks can "have an impact," but the claim is a "far cry" from being a chief vulnerability for the Trump administration.

Legal Implications

At the forum, a lively debate emerged between Segal -- and others backing his argument -- and CEI members, including several in the audience.

CEI and other conservative groups advocate aggressive action, such as an attack on EPA's GHG endangerment finding that underpins all of the agency's climate rules. They are adamantly urging Trump to leave Paris, arguing it threatens the administration's ability to uproot climate regulation.

But others who favor a more traditional deregulatory approach are backing continued participation, suggesting Trump negotiators could help ensure a long-term future for fossil fuels under the deal.

The CEI officials argue that supporters of EPA climate rules -- particularly Democratic state attorneys general -- will use continued U.S. participation in Paris to argue EPA must retain its existing regulations.

CEI's Marlo Lewis charged that staying in Paris effectively binds the United States to the Obama administration's preferred trajectory, in part because a future Democratic administration could significantly ramp up the country's commitments.

"As long as this Frankenstein monster exists, with the right people at the top, it could revert back to exactly where Obama left it. And the only way to prevent that is to pull it up by the roots, or at least pull us out of it so that we are no longer under any kind of obligation, legal or moral or however you want to describe it," Lewis said.

He added: "Obama made a promise, and that's going to haunt Trump as long as he acknowledges the legitimacy of that promise."

Horner also noted that Obama officials already made the argument that the CPP is central to the U.S. Paris commitment. He referenced a December 2015 declaration from former U.S. climate negotiator Todd Stern arguing that a Supreme Court stay of the CPP would open the door for other countries to scale back their own GHG reduction pledges.

"For many countries, willingness to take action depends on collective trust that the major emitters are taking action. If a stay of the Clean Power Plan is granted, there is a real threat that some other countries, including major emitters, might reduce the intensity or pace of their actions or even fail to achieve their commitments," Stern wrote at the time.

Nonetheless, Segal noted that the high court granted the stay in February 2016, apparently rejecting Stern's reasoning. He even suggested that Stern's declaration "earned them" the stay, arguing that EPA "overstayed their welcome by filing the Stern declaration."

Sen. James Inhofe (R-OK) -- a chief opponent of climate policy who is deeply critical of the Paris deal -- even acknowledged Segal's point at the time, when he called Stern's declaration "further proof that the Obama administration is misusing the regulatory process in a desperate attempt to protect the president's misguided climate legacy." He added that the Clean Power Plan "should be decided on its own merits."

'Have a Little Faith'

Segal and others say CPP supporters likely will cite continued Paris participation in legal arguments to sustain the power plant GHG rule and other climate regulations. But they downplayed the success of such arguments. "Every argument you think of will probably be raised by every side," Segal said.

Jeff Merrifield, a former Nuclear Regulatory Commission member now with the Pillsbury law firm, added that much of litigation is "throwing spaghetti against the wall to see what sticks." But he said "nothing in the Paris Agreement is dependent on either the endangerment finding . . . or the Clean Power Plan. . . . We can still be a part of the Paris Agreement, but that doesn't affect the strong arguments on the part of the Trump administration in repealing that."

And Keith Benes, a former Obama State Department attorney, noted that parts of the agreement relating to "how the U.S. tries to achieve a goal of emissions reductions, what it might be [and] whether it can change . . . none of those are legally binding under international law."

More broadly, Segal said Lewis and others at CEI "pushed . . . too far" on the argument that pulling out of Paris is necessary to prevent a future administration from ramping up climate regulation.

If Trump were to pull the United States out, "there's nothing that would keep" a new administration "from either rejoining Paris or even rejoining Paris on worse terms," Segal said. He and Merrifield also suggested Trump negotiators could secure a better deal for the United States if they maintain a seat at the table.

"Have a little faith in your new administration," Segal said, adding that he would "like to see what the Paris structure would look like if the team of negotiators is not sent by Barack Obama but is sent by Donald Trump." And if the new administration cannot make a difference, he suggested it could pull out of the deal at that point.

"I think we can get a better deal if we allow this administration to do what this administration does," Segal said. -- *Abby Smith* (asmith@iwpnews.com)

Katherine So
Office of Media Relations Intern
U.S. Environmental Protection Agency
Telephone: (202)-564-4511
so.katherine@epa.gov

Message

From: So, Katherine [so.katherine@epa.gov]
Sent: 4/27/2017 1:50:31 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
CC: So, Katherine [so.katherine@epa.gov]
Subject: Bloomberg BNA: New water rule would protect fewer streams, Senate told, 4/27/17

Bloomberg BNA
http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=110274590&vname=dennotallissues&wsn=499963000&searchid=29697745&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0
New water rule would protect fewer streams, senate told
By Amena Saiyid 4/27/17

Fewer lakes, rivers and streams would receive federal protections if the EPA follows the late Justice Antonin Scalia's recommendation to read the jurisdiction of the Clean Water Act narrowly, a former agency official said.

"It would be considerably narrower than the Clean Water Rule," Kenneth Kopocis, the Environmental Protection Agency's former deputy assistant administrator for water, told the Senate Environment and Public Works Committee, April 26. Kapocis spearheaded the Obama administration's efforts to craft the regulation (RIN:2040-AF30), which is also known as the waters of the U.S. (WOTUS) rule.

President Donald Trump has ordered the EPA to recraft the rule, which defines the reach of the Clean Water Act, based on Scalia's plurality opinion in a 2006 U.S. Supreme Court decision that sought to clarify the federal government's jurisdiction over wetlands (*Rapanos v. United States*, 547 U.S. 715, 62 ERC 1481 (U.S. 2006)).

Opponents of the existing rule, including many states, called it an unlawful expansion of federal authority. However, Sen. Thomas Carper (D-Del.), the ranking member on the Senate Environment and Public Works Committee, asked whether the Trump administration's rewritten rule would "expand or restrict jurisdiction."

Most Streams, Wetlands Unprotected

If the agencies follow the Trump directive, then about 60 percent of the nation's streams and about 80 percent to 90 percent of wetlands would lose protection, Kopocis told Bloomberg BNA after the hearing. Scalia had said that wetlands and streams covered by the Clean Water Act had to flow continuously "as opposed to ordinarily dry channels through which water occasionally or intermittently flows."

In response to Carper's question about expanding or narrowing protections, Maj. Gen. John Peabody, who was the deputy commanding general for civil and emergency operations at the corps from October 2013 to August 2015, said his agency establishes jurisdiction by going in the field and examining the waters or wetlands in question.

The Clean Water Rule, which is currently embroiled in litigation and stayed by a federal appeals court, acknowledged Scalia's opinion but relied heavily on Justice Anthony Kennedy's concurring opinion that emphasized the "significance" of the impact that upstream waters have on the health of downstream navigable rivers.

Misha Tseytlin, Wisconsin's solicitor general, said the nationwide stay imposed by the U.S. Court of Appeals for the Sixth Circuit, along with the 13-state stay by the U.S. District Court in North Dakota, are evidence of the weak legal underpinnings of the water rule. He said the courts would never have issued the stays if they didn't think the water rule would withstand final legal scrutiny.

Peabody called the corps' participation in the rulemaking process "marginalized," which Sen. John Barrasso (R-Wyo.), the committee's chairman, said resulted in a "legally flawed" rule.

The corps' involvement was limited to providing analysis of various proposed changes or alterations to a draft of the rule, said Peabody, who spoke for himself and not the corps.

Katherine So
Office of Media Relations Intern
U.S. Environmental Protection Agency
Telephone: (202)-564-4511
so.katherine@epa.gov

Message

From: McGonagle, Kevin [mcgonagle.kevin@epa.gov]
Sent: 4/19/2017 4:32:49 PM
To: Jefferson, Gayle [Jefferson.Gayle@epa.gov]; Mccabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Graham, Amy [graham.amy@epa.gov]; MacKinnon, Kathleen [MacKinnon.Kathleen@epa.gov]; Dibble, Christine [Dibble.Christine@epa.gov]; Younes, Lina [Younes.Lina@epa.gov]; AO OPA Media Relations [AO_OPA_Media_Relations@epa.gov]; Brennan, Thomas [Brennan.Thomas@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: Business Insider: The EPA wants to know what you think about scrapping air-pollution and radiation rules, 4/19/17

Business Insider
http://www.businessinsider.com/epa-public-comment-pollution-rules-2017-4
The EPA wants to know what you think about scrapping air-pollution and radiation rules
By Rafi Letzter 4/19/17

The US has a lot of rules about which kinds of gases, particles, and forms of radiation can get pumped into the atmosphere.

Many of those regulations were written by the Environmental Protection Agency, under the authority Congress granted it through the Clean Air Act.

President Donald Trump and many other conservatives see these rules as overly burdensome and believe the country should have fewer of them. Trump's EPA chief, Scott Pruitt, vocally endorses that position, too.

Trump signed an executive order in March instructing the EPA to review those rules and revise or repeal them.

The order says it's the "policy of the United States to alleviate unnecessary regulatory burdens placed on the American people."

Trump specifically instructed the EPA to begin dismantling the Clean Power Plan, a sweeping Obama-era law designed to get 47 states to slash greenhouse-gas emissions from their coal plants.

But revising or repealing a regulation that's already on the books isn't so simple. The EPA will have to go through the same arduous, months-long rulemaking process it used to create the regulations in the first place. And part of that process involves seeking comments from the public.

Now that process is underway.

The EPA has created a page on Regulations.gov where the public can comment. As of writing, it has already logged 1,268 comments, most of which appear to oppose repealing the air-quality regulations.

"The existing regulations are in place for a reason," one recent comment says. "They were enacted to fill a public need for clean water and air. Undoing these regulations is not in the public interest. Short term thinking and ignoring basic facts is sure way to be on the wrong side of history."

"Don't do this," another says.

The agency will also hold a teleconference from 11 a.m. to 2 p.m. ET on April 24 — members of the public will have the opportunity to weigh in. You can find more information on the EPA's regulatory reform process on its website.

Kevin McGonagle
Office of Media Relations Intern
U.S. Environmental Protection Agency
Telephone: (202)-564-4524
mcgonagle.kevin@epa.gov

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/24/2017 12:46:50 PM
To: Zenick, Elliott [Zenick.Elliott@epa.gov]
Subject: RE: NEVER MIND Re: Printing copies of the 4 FR documents

Oops.

-----Original Message-----
From: Zenick, Elliott
Sent: Friday, March 24, 2017 8:43 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: NEVER MIND Re: Printing copies of the 4 FR documents

OAR --- Office of Air and Radiation

-----Original Message-----
From: Schwab, Justin
Sent: Friday, March 24, 2017 8:42 AM
To: Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: Re: NEVER MIND Re: Printing copies of the 4 FR documents

Understood and I think this is a good idea. Will work in where appropriate, to the extent I can.

I will review all four documents now. Sarah and I will meet later today to confer on any changes we have. Will aim to return to you for processing this afternoon (and as always I rely on you all to make sure that's done according to protocol, whether through you, AOR, etc? - as I am still learning those ropes).

Sent from my iPhone

> On Mar 24, 2017, at 8:37 AM, Zenick, Elliott <Zenick.Elliott@epa.gov> wrote:
>
> No problem. Attorney Client/DP Ex. 5

Attorney Client/DP Ex. 5

>
> -----Original Message-----
> From: Schwab, Justin
> Sent: Friday, March 24, 2017 8:26 AM
> To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
> Subject: NEVER MIND Re: Printing copies of the 4 FR documents
>
> Sarah is printing them for me so I don't need you folks to. Sorry for all the emails
>
> Sent from my iPhone
>
>> On Mar 24, 2017, at 7:17 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>>
>> All -
>>
>> My printer is not working and it may be a while before I can get it fixed.
>>
>> Could one of you please print 2 copies each of the 4 documents (111(b) and (d) notice, methane rule notice, withdrawal of FIP/CEIP)?
>>
>> Please let me know when you have done so and I will come to get the copies. I will do my best to ensure that all third floor edits/feedback comes in today.
>>
>> Thanks again for your and others' hard work on this.
>>
>> Best,

>>
>> Justin
>>
>> Sent from my iPhone

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/28/2017 4:46:20 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: McGartland, Al [McGartland.Al@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: Re: RIA CPP

I agree

Sent from my iPhone

On Apr 28, 2017, at 12:42 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Sorry I mis-read this. Attorney Client / Ex. 5

Attorney Client / Ex. 5 Justin, Mandy?

From: McGartland, Al
Sent: Friday, April 28, 2017 12:37 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RIA CPP

Deliberative Process / Ex. 5

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 1/31/2017 8:05:08 PM
To: Cozad, David [Cozad.David@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: Re: List of EPA Enforcement Actions - Case Names - Confidential/Enforcement Sensitive

Sounds good! Will review prior to our 5 PM. Thanks!!

Sent from my iPhone

On Jan 31, 2017, at 2:04 PM, Cozad, David <Cozad.David@epa.gov> wrote:

Hi Justin

Attorney Client / Ex. 5

That work?

Dave

From: Shiffman, Cari
Sent: Tuesday, January 31, 2017 1:41 PM
To: Cozad, David <Cozad.David@epa.gov>
Cc: Miles, Erin <Miles.Erin@epa.gov>
Subject: List of EPA Enforcement Actions - Case Names

Thanks,

Cari Shiffman, Special Assistant
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: **Personal Phone / Ex. 6**

<List of U.S. EPA Enforcement Actions 1-31-17 (Enforcement Sensitive).docx>

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/24/2017 11:15:01 AM
To: Brown, Byron [brown.byron@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Amanda [gunasekara.amanda@epa.gov]
Subject:
Attachments:

Attorney Client / Ex. 5

Again, we should try to review and give any comments/edits today.

Sent from my iPhone

Begin forwarded message:

From: "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
Date: March 22, 2017 at 6:50:05 PM EDT
To: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Gunasekara, Amanda" <gunasekara.amanda@epa.gov>
Cc: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Jordan, Scott" <Jordan.Scott@epa.gov>
Subject: Attorney Client / Ex. 5

Attorney Client / Deliberative Ex. 5

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/28/2017 7:11:25 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Attorney Client / Ex. 5

Samantha,

Attorney Client / Ex. 5

Please let me know if you have any questions.

Best,

Justin

Sent from my iPhone

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/24/2017 11:13:44 AM
To: Brown, Byron [brown.byron@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Amanda [gunasekara.amanda@epa.gov]
Subject: Attorney Client / Ex. 5
Attachments:

In order to give them enough time to format it we should try to review and give any comments or edits to this Attorney Client / Ex. 5 Attorney Client / Ex. 5 today, if possible.

If anyone has any questions or wants to review together in person I'm Personal Phone / Ex. 6 cell)

Sent from my iPhone

Begin forwarded message:

From: "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
Date: March 23, 2017 at 10:54:35 PM EDT
To: "Schwab, Justin" <schwab.justin@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>
Cc: "Jordan, Scott" <Jordan.Scott@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
Subject: Attorney Client / Ex. 5

All –

ACP Deilberative Process / Ex. 5

Please note that there are some bubble comments you should read during your review.

Thanks

Lorie

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/28/2017 5:14:10 PM
To: Freire, JP [Freire.JP@epa.gov]
Subject: Attorney Client / Ex. 5

Attorney Client/DP Ex. 5

Sent from my iPhone

On Mar 28, 2017, at 1:10 PM, Freire, JP <Freire.JP@epa.gov> wrote:

Just take a quick glance at this. It's fine, White House cleared, but just fyi.

From: Milbourn, Cathy
Sent: Tuesday, March 28, 2017 12:17 PM
To: Freire, JP <Freire.JP@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: FW: EPA to Review the Clean Power Plan and Other Obama-Era Rules

---

From: U.S. EPA Media Relations [mailto:noreply@cision.com]
Sent: Tuesday, March 28, 2017 12:17 PM
To: Milbourn, Cathy <Milbourn.Cathy@epa.gov>
Subject: EPA to Review the Clean Power Plan and Other Obama-Era Rules

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/24/2017 10:43:37 AM
To: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
CC: Minoli, Kevin [Minoli.Kevin@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Zenick, Elliott [Zenick.Elliott@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: Attorney Client / Ex. 5

I think Sarah and Mandy will want to look, maybe byron as well. We should be able to turn around today. I understand the tight schedule everyone has been on and appreciate everyone's effort on this.

Sent from my iPhone

On Mar 23, 2017, at 10:54 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

All –

ACP Deliberative Process / Ex. 5

Please note that there are some bubble comments you should read during your review.

Thanks

Lorie

Attorney Client / Ex. 5

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/28/2017 2:58:20 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: Fwd:

Sent from my iPhone

Begin forwarded message:

> **From:** "Dravis, Samantha" <dravis.samantha@epa.gov>
> **Date:** April 28, 2017 at 10:27:02 AM EDT
> **To:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>
> **Cc:** "Jackson, Ryan" <jackson.ryan@epa.gov>

Attorney Client / DPP / Ex. 5

> What time works for people?

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/24/2017 10:41:54 AM
To: Stern, Allyn [Stern.Allyn@epa.gov]
Subject: Re: Welcome

Thank you, this is very kind. I look forward to working with you as well. Personal Matters / Ex. 6

Sent from my iPhone

On Mar 24, 2017, at 12:15 AM, Stern, Allyn <Stern.Allyn@epa.gov> wrote:

Hi Justin -

Personal Matters / Ex. 6 Just wanted to say congratulations and glad to have you in OGC. You've done an amazing job getting up to speed on so many different issues and always seem to ask questions that get right to the heart of the matter. I really appreciate your straightforward approach. Looking forward to continuing to work with you.

Best,
Allyn

Allyn Stern
Regional Counsel
US EPA Region 10
1200 Sixth Avenue, Seattle, WA 98101
206-553-1223. (desk)
Personal Phone / Ex. 6 (cell)

Begin forwarded message:

From: "Koslow, Karin" <Koslow.Karin@epa.gov>
Date: March 23, 2017 at 3:17:54 PM PDT
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>, OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Subject: Notes from OGC Senior Staff - 3/21/17

Kevin Minoli chaired the meeting.

He welcomed Justin Schwab to OGC in his new capacity as our Deputy General Counsel. For details about Justin's professional background, please see below.

Welcome Justin!

Thanks,
Karin

Karin Koslow
Deputy Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency

(202) 564-0171
WJC North Room 7510B

From: Minoli, Kevin
Sent: Wednesday, March 22, 2017 11:20 PM
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>
Subject: Please join us in welcoming Justin Schwab as our new Deputy General Counsel -- Please stop by the Front Office breakfast and say hello!

Hi Everyone-

It is my pleasure to officially welcome Justin Schwab to OGC as a new Deputy General Counsel. Some of you have already met and worked with Justin as he was the legal POC for the transition team.

Justin comes to us form Baker & Hostetler, where for the past four years he specialized in the Clean Air Act and researched and drafted briefs (including to the Supreme Court) on various environmental issues. Prior to that he clerked for two Judges, the Hon. Richard Wesley, United States Court of Appeals for the Second Circuit, and the Hon. Christine Durham, Utah Supreme Court. He is a graduate of Yale Law School, where he was Editor-in-Chief of the Yale Journal of Law & the Humanities, as well as serving as an editor on the Yale Journal on Regulation. We are looking forward to seeing his gimlet eye cast over OGC's written opinions! Justin also has a PhD in Classics from the University of California at Berkeley. So all our Cicero scholars, here's your chance to reinvigorate those rusty skills!

Justin is sitting in 4020 and I encourage you all to come get to know him. We are delighted that he has joined the OGC team, please come to a breakfast in the Front Office Thursday morning (that's today) and welcome and/or meet him!

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/17/2017 7:32:09 PM
To: Shapiro, Mike [Shapiro.Mike@epa.gov]

Subject: Tentative: WOTUS Call in Personal Phone / Ex. 6
Location: 3233 WJCE

Start: 4/19/2017 2:00:00 PM
End: 4/19/2017 2:45:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/24/2017 10:41:02 AM
To: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
CC: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Amanda [gunasekara.amanda@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Zenick, Elliott [Zenick.Elliott@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]
Subject: Attorney Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

Sent from my iPhone

On Mar 23, 2017, at 10:59 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Deliberative Process / Attorney-Client / Ex. 5

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

From: Schmidt, Lorie
Sent: Wednesday, March 22, 2017 6:50 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Gunasekara, Amanda <gunasekara.amanda@epa.gov>
Cc: Kevin Minoli (Minoli.Kevin@epa.gov) <Minoli.Kevin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Attorney Client / Ex. 5

Attached are 3 draft FR notices that announce that the Agency is initiating the review of the CPP, the GHG rule for new power plants, and the 2016 oil and gas rule. Deliberative Process / Attorney-Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/22/2017 5:14:12 PM
To: Hupp, Sydney [hupp.sydney@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Subject: Re: Meeting Staffing and Briefings

Also please 4/25 - cooperative generation ceos

Sent from my iPhone

On Apr 21, 2017, at 4:26 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> Hello Sydney,
>
> Please add me to: (David, Sarah and I will confer on Monday to make sure at least one of us will be able to attend each of these):
>
> 4/25:
>
> - Kentucky electric coops
>
> 4/26:
>
> - GM
> -Interstate Oil and Gas
> - Josh Fryden
> - Paris Prep
>
> 4/27
>
> - Meet the Cabinet (if OGC presence would be helpful)
> - Auto alliance
>
> 4/28:
>
> - Murkowski
> - growth energy
> - sorghum
> Sent from my iPhone
>
> On Apr 21, 2017, at 3:25 PM, Hupp, Sydney <hupp.sydney@epa.gov> wrote:
>
>> Just a reminder to please send me which meetings I should include you in for next week! Thanks!
>>
>> Sydney Hupp
>> Office of the Administrator- Scheduling
>> 202.816.1659
>>
>> **From:** Hupp, Sydney
>> **Sent:** Friday, April 21, 2017 9:31 AM

To: Bangerter, Layne <bangerter.layne@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Hupp, Millan <hupp.millan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Martin, JohnC <Martin.JohnC@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Perrotta, Pasquale <Perrotta.Pasquale@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Willis, Sharnett <Willis.Sharnett@epa.gov>; Woodward, Cheryl <Woodward.Cheryl@epa.gov>
Subject: Meeting Staffing and Briefings

Good morning everyone! So I am going to start sending out a list of upcoming meetings/ speaking engagements and asking that you put yourselves in them as you see fit based off of topic and attendees. Normally I will send this list in conjunction with the daily LXL but since I have several holes needing filled in the LXL for next week I will send that out by COB today. Please write back to me separately ASAP the meetings that you or someone you designate from your team should be added to.

Thank you!

Meeting with the National Turfgrass Association
(April 25, 2017 10:00AM-10:30AM)
Topic: To discuss EPA's WaterSense initiative; Repeal Clean Water Rule (WOTUS) (Expand role of energy savings through turf research, and continue making environmental decisions based on sound peer-review science, versus emotional politics)

Meeting with Cooperative Generation & Transmission CEOs
(April 25, 2017 10:45AM-11:15AM)
Background: When NRECA met with Administrator Pruitt last month, he expressed interest in meeting with Cooperative Generation & Transmission CEOs
Location: Administrator's Office

Meeting with Kentucky Association of Electric Cooperatives
(April 25, 2017 1:15PM-1:45PM)
Topic: regulations coming down the pipeline

Meeting with Southwest Council of Agribusiness
(April 25, 2017 2:15PM-2:45PM)
Background: The SWCA is an alliance of agricultural organizations, lending institutions, and agriculture-related businesses established to actively advocate for strong agricultural policy (specific topic requested)

Meeting with North Dakota Farm Bureau and the North Dakota Association of Rural Electric Cooperatives
(April 25, 2017 3:00PM-3:30PM)
Topic: Thank Administrator Pruitt for his rollback of all of the harmful regulations these last eight years. To discuss EPA regulations affecting power producers and rural electric providers (e.g. Clean Power Plan, Social Cost of Carbon, coal ash, and concept of

cooperative federalism) in the context of providing affordable, reliable electricity to rural North Dakota, including our farmers and ranchers.
Slated to Staff: Sarah and Mandy

Meeting with Ambassador Gray and Dave Vander Griend
(April 25, 2017 4:00PM-4:45PM)
Topic: free-market biofuel policy

Meeting with General Motors
(April 26, 2017 10:00AM-10:30AM)
Topic: CAFE mid-term review/introductory meeting

Meeting with Interstate Oil and Gas Compact Commission
(April 26, 2017 11:00AM-11:30AM)
Topic: discuss exploring a new approach for state regulations of oil and gas, that would generally involve state governors, congressmen and members of the Trump Administration

Lunch with Gary Smith and Executives
(April 26, 2017 12:30PM-1:45PM)
Topic: Meet and Greet; Energy issues
Slated to Staff: Ryan

Meeting with Newtrient
(April 26, 2017 3:00PM-3:30PM)
Topic: *awaiting briefing paper
Slated to Staff: Sam

Meeting with Honorable Josh Fryden, Minister for Environment and Energy (Australia)
(April 26, 2017 4:15PM-4:45PM)
Topic: general environmental/energy cooperation
Slated to Staff: Jane

Paris Meeting Prep
(April 26, 2017 4:45PM-5:45PM & April 27, 2017 12:15PM-1:15PM)
Background: Paris Meeting taking place at the White House on April 27 at 1:30. No plus ones are allowed in the meeting.
Slated to Staff: Ryan, Mandy, Sam

Meet the Cabinet Event
(April 27, 2017 9:15AM-10:30AM)
Topic: *Tate and Troy have more info
Slated to Staff: Ryan, Tate, Troy, Lincoln, Millan

Meeting with Auto Alliance
(April 27, 2017 11:45AM-12:15PM)
Topic: key EPA priorities affecting the auto industry

Meeting with Alliance to Restore Our Waterways (AROW)
(April 27, 2017 3:00PM-4:00PM)

Topic: The Alliance to Restore Our Waterways (AROW) is a coalition of industry groups affected by the cleanup process at contaminated sediment sites. The group plans to discuss ways to improve implementation of the Superfund program.
Slated to Staff: Ryan and Byron

Speaking Engagement: Alliance Resource Partners LP Board of Directors Meeting
(April 27, 2017 6:30PM-8:30PM)
Topic: Joe Craft discussing topics with the Administrator on Monday
Slated to Staff: Millan and Lincoln

Meeting with Senator Murkowski
(April 28, 2017 9:15AM-9:45AM)
Topic: requested

Meeting with Growth Energy
(April 28, 2017 10:00AM-10:30AM)
Topic: Discuss developments within the ethanol industry, the development of the market for higher ethanol blends such as E15 and regulatory barriers to commercial introduction. The interaction of EPA administered fuel programs such as the Renewable Fuel Standard (RFS), RFS Point of Obligation and ethanol production and marketing.

Meeting with the National Sorghum Producers
(April 28, 2017 1:45PM-2:15PM)
Topic: First, NSP has been working with EPA since 2013 to gain approval for a sorghum oil biodiesel pathway. The Agency has the legal authority to approve this pathway but continues to request information immaterial to approval. Second, sorghum farmers have witnessed significant pesticide-related restrictions and the threat of revocation of more than half of the crop's reliable insecticides. NSP recognizes the significant challenges the coming registration reviews of important chemistries will bring.

Meeting with Steve Koonin
(April 28, 2017 2:30PM-3:00PM)
Topic: *we need to provide

Governor's Biofuels Coalition Call
(April 28, 2017 3:30PM-4:00PM)
Topic: several regulatory actions that EPA could consider to help grow our states' biofuels industry.

Meeting with IPAA
(May 1, 2017 2:45PM-3:15PM)
Topic: Introductory meeting between the Administrator and IPAA President to broadly discuss issues of concern before EPA.

Meeting with Mike Ingram
(May 2, 2017 11:00AM-12:00PM)
Topic: possible EPA restructure opportunities
Slated to Staff: Ken and Ryan

Meeting with IPC
(May 2, 2017 2:00PM-2:30PM)
Topic: To have the Administrator meet with a group of 20-25 CEOs and other C-Suite Level Executives of IPC- Association Connecting Electronics Industries' member

companies. The group is here as part of their annual Executive Fly-in, and meeting with other top Administration officials and Members of Congress.

Meeting with Chet Thompson (AFPM)
(May 2, 2017 3:00PM-3:30PM)
Topic: Chet would like to reintroduce himself, discuss some of the issues that are top of mind for our refining and petrochemical members, and of course explore any ways AFPM can be helpful to the Administrator

Meeting with Canadian Association of Petroleum Producers (CAPP)
(May 2, 2017 4:00PM-4:30PM)
Topic: CAPP is the Canadian equivalent of API, and CAPP member companies produce 85% of Canada's oil and natural gas. The purpose of the meeting would be for the CAPP officials to gain a better understanding of the environmental regulatory rollback in the United States relating to the oil and gas sector

Meeting with the Greater Oklahoma City Chamber
(May 4, 2017 9:45AM-10:15AM)
Topic: *requested

Speaking Engagement: 27th Annual Administrator's Small Business Awards Ceremony
(May 4, 2017 11:15AM-12:00PM)
Purpose: To honor EPA employees and small businesses for significant accomplishments and contributions to the small business community and public environment. The Office of Small and Disadvantaged Business Utilizations' Director will also recognize those program offices and regions that have met or exceeded the goals in at least four of the five small business procurement categories. The coveted OSDBU Director's crystal Duck Award will also be presented to those who have shown a strong commitment to EPA's Small Business Program and performed activities resulting in significant accomplishments within their program office/region.
Slated to Staff: Lincoln and Millan

Meeting with American Forest and Paper Association
(May 4, 2017 1:00PM-1:30PM)
Topic: To explain the paper and wood products manufacturers' highest EPA regulatory reform priorities and their alignment with Administrator Pruitt and President Trump's agenda; and to learn from Mr. Pruitt how we can best support the agency in achieving these reforms.

Speaking Engagement: The OK State Convention's Gala Dinner (In Oklahoma City)
(May 5, 2017 6:30-8:30PM)

Sydney Hupp
Office of the Administrator- Scheduling
202.816.1659

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/28/2017 1:45:00 PM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]

Subject: Tentative: Attorney Client / Ex. 5
Location: 3216WJC-South

Start: 4/5/2017 6:30:00 PM
End: 4/5/2017 7:00:00 PM
Show Time As: Busy

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/23/2017 2:41:59 PM
To: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Subject: Attorney Client / Ex. 5

I can come to yours - will be there as close to 11:30 as I can

Sent from my iPhone

> On Mar 23, 2017, at 10:27 AM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:
>
> 1130 would be great.
>
> My office or yours?
>
> Sent from my iPhone
>
>> On Mar 23, 2017, at 9:06 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>>
>> I should be free 11:30-12, 1-1:30, 2:30-4:30, after 5
>>
>> Sent from my iPhone
>>
>>> On Mar 23, 2017, at 8:50 AM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:
>>>
>>> Justin - Attorney Client / Ex. 5
Attorney Client / Ex. 5
>>> Lorie
>>>
>>> Sent from my iPhone

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/28/2017 1:40:40 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: RE: Recusals

Sounds good, thanks for letting me know.

From: Fotouhi, David
Sent: Tuesday, March 28, 2017 9:39 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Subject: Recusals

Justin:

To close the loop on our discussion yesterday:

- Gibson Dunn did not make an appearance the CPP challenge under any docket number.
- I will need to recuse from Luminant until I can speak with Justina Fugh (who is out until Thursday)—Gibson was co-counsel with Balch & Bingham.

Best,

David

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/21/2017 8:37:48 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Attorney Client / Ex. 5

One note - Attorney Client / Ex. 5

Attorney Client / Ex. 5

Sent from my iPhone

On Apr 21, 2017, at 4:28 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Attorney Client / Ex. 5

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/19/2017 5:21:02 PM
To: Administrator / Ex. 6

Subject: Tentative: WOTUS Rules Options
Location: Administrator's Office

Start: 3/20/2017 3:00:00 PM
End: 3/20/2017 3:30:00 PM
Show Time As: Busy

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/23/2017 10:08:26 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Amanda [gunasekara.amanda@epa.gov]
Subject: Attorney Client / Ex. 5

(Copying Mandy here)

Kevin,

Deliberative Process / Attorney-Client / Ex. 5

As a reminder to you both, my cell is Deliberative Process / Attorney-Client / Ex. 5

Sent from my iPhone

On Mar 22, 2017, at 11:10 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Attorney Work Product
Do NOT Release Under FOIA

Hi Justin and Sarah- I wanted to follow up from the conversations of today.

Deliberative Process / Attorney-Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 22, 2017, at 7:40 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> I will make myself as available as possible for the legal discussion, and would welcome that conversation as early as possible.
>
> On which office has lead, etc, I defer entirely to those who know the correct process.
>
> Sent from my iPhone
>
> On Mar 22, 2017, at 7:21 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:
>
>> Thanks, Justin.
>
> Deliberative Process / Attorney-Client / Ex. 5
>
> Lorie
>
> Lorie Schmidt
> Associate General Counsel, Air and Radiation
> Office of General Counsel
> US Environmental Protection Agency
> (202)564-1681

From: Schwab, Justin
Sent: Wednesday, March 22, 2017 7:05 PM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Cc: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Gunasekara, Amanda <gunasekara.amanda@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Attorney Client / Ex. 5

Thank you, Lorie.

Deliberative Process / Attorney-Client / Ex. 5

Sent from my iPhone

On Mar 22, 2017, at 6:50 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Deliberative Process / Attorney-Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Attorney Client / Ex. 5

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/28/2017 9:37:13 AM
To: Freire, JP [Freire.JP@epa.gov]
CC: Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Konkus, John [konkus.john@epa.gov]
Subject: Attorney Client / Ex. 5

Attorney Client / Ex. 5

Sent from my iPhone

On Mar 28, 2017, at 2:19 AM, Freire, JP <Freire.JP@epa.gov> wrote:

Attorney Client / Ex. 5

From: Ferguson, Lincoln
Sent: Monday, March 27, 2017 9:14 PM
To: Freire, JP <Freire.JP@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Attorney Client / Ex. 5

FYI when drafting press release/remarks for tomorrow

Sent from my iPhone

Begin forwarded message:

> **From:** "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
> **Date:** March 27, 2017 at 8:48:37 PM EDT
> **To:** "Ferguson, Lincoln" <ferguson.lincoln@epa.gov>
> **Subject:** Attorney Client / Ex. 5
>
> See attached case
>
> Sent from my iPhone
>
> Begin forwarded message:

From: "Schwab, Justin" <schwab.justin@epa.gov>
Date: March 27, 2017 at 7:57:51 PM EDT
To: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
Subject: Attorney Client / Ex. 5

Sent from my iPhone

Begin forwarded message:

> **From:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **Date:** March 27, 2017 at 7:37:17 PM EDT
> **To:** "Schwab, Justin" <schwab.justin@epa.gov>
> **Cc:** "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
> **Subject:** Attorney Client / Ex. 5
>
> Justin- Attorney Client / Ex. 5
>
> Attorney Client / Ex. 5
>
> Kevin

Attorney Client / Ex. 5

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/17/2017 7:40:41 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Attorney Client / Ex. 5

Ex. 5 - AC/AWP

Sent from my iPhone
> On Mar 17, 2017, at 3:13 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:
>
> What are we doing now?
>
> Ryan Jackson
> Chief of Staff
> U.S. EPA
> (202) 564-6999
>
>> On Mar 17, 2017, at 3:07 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>>
>> Met with Ex. 5 - AC/AWP this afternoon (which is why I was absent from the WOTUS meeting) and can brief everyone up Monday morning
>>
>> Sent from my iPhone

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/23/2017 9:51:40 AM
To: Albores, Richard [Albores.Richard@epa.gov]
CC: Packard, Elise [Packard.Elise@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Re: Please join us in welcoming Justin Schwab as our new Deputy General Counsel -- Please stop by the Front Office breakfast and say hello!

Thank you!

Sent from my iPhone

On Mar 22, 2017, at 11:23 PM, Albores, Richard <Albores.Richard@epa.gov> wrote:

> Justin - welcome aboard. I look forward to helping to incorporate you into the OGC leadership team. To many productive years protecting human health and the environment.
>
> Cheers,
>
> R
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> > **Date:** March 22, 2017 at 11:19:32 PM EDT
> > **To:** OGC ALL USERS <OGC_ALL_USERS@epa.gov>
> > **Subject: Please join us in welcoming Justin Schwab as our new Deputy General Counsel -- Please stop by the Front Office breakfast and say hello!**
> >
> > Hi Everyone-
> >
> > It is my pleasure to officially welcome Justin Schwab to OGC as a new Deputy General Counsel. Some of you have already met and worked with Justin as he was the legal POC for the transition team.
> >
> > Justin comes to us form Baker & Hostetler, where for the past four years he specialized in the Clean Air Act and researched and drafted briefs (including to the Supreme Court) on various environmental issues. Prior to that he clerked for two Judges, the Hon. Richard Wesley, United States Court of Appeals for the Second Circuit, and the Hon. Christine Durham, Utah Supreme Court. He is a graduate of Yale Law School, where he was Editor-in-Chief of the Yale Journal of Law & the Humanities, as well as serving as an editor on the Yale Journal on Regulation. We are looking forward to seeing his gimlet eye cast over OGC's written opinions! Justin also has a PhD in Classics from the University of California at Berkeley. So all our Cicero scholars, here's your chance to reinvigorate those rusty skills!
> >
> > Justin is sitting in 4020 and I encourage you all to come get to know him. We are delighted that he has joined the OGC team, please come to a breakfast in the Front Office Thursday morning (that's today) and welcome and/or meet him!

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/3/2017 4:35:44 PM
To: Konkus, John [konkus.john@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]
Subject: Re: Reporter seeking comment on SCOTUS not halting Clean Water Rule litigation

I am recused from WOTUS litigation FYI

Sent from my iPhone

On Apr 3, 2017, at 11:59 AM, Konkus, John <konkus.john@epa.gov> wrote:

Justin and David: Thoughts?

Begin forwarded message:

Resent-From: <Press@epa.gov>
From: Keith Goldberg <keith.goldberg@law360.com>
Date: April 3, 2017 at 11:57:48 AM EDT
To: Press <Press@epa.gov>
Subject: Reporter seeking comment on SCOTUS not halting Clean Water Rule litigation

I'm working on a deadline story on the Supreme Court today refusing to put the litigation over the Clean Water Rule on hold and wanted to see if anyone from the agency wanted to comment. If you could get back to me ASAP, I'd appreciate it.

--
Best,

Keith Goldberg
Senior Reporter, Energy

LAW360
A LexisNexis® Company
Legal News & Data
111 West 19th Street
5th Floor
New York, NY 10011
Phone: (646) 783-7187
Mobile: (646) 450-3346
E-mail: keith.goldberg@law360.com
@kdgscribe
@Energy Law360

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/21/2017 7:44:49 PM
To: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Subject: Attorney Client / Ex. 5

Okay, thank you. Just wanted to make sure I hadn't dropped the ball

Sent from my iPhone

On Apr 21, 2017, at 3:41 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

> We need to move Sarah's comments into the version that has your comments.
>
> Lorie Schmidt
> Associate General Counsel, Air and Radiation
> Office of General Counsel
> US Environmental Protection Agency
> (202)564-1681
>
> ---
>
> **From:** Schwab, Justin
> **Sent:** Friday, April 21, 2017 3:40 PM
> **To:** Schmidt, Lorie <Schmidt.Lorie@epa.gov>
> **Subject:** Attorney Client / Ex. 5
>
> Is the draft that Sarah D. sent ready to go to
> RJ or is ARLO still working on it?
> Sent from my iPhone
>
> On Apr 21, 2017, at 11:36 AM, Dunham, Sarah <Dunham.Sarah@epa.gov> wrote:
>
> > Lorie, Justin, Mandy-
> >
> > Ex. 5 - Deliberative Process/Attorney Client
> >
> > Thanks

From: Schmidt, Lorie
Sent: Thursday, April 20, 2017 1:38 PM
To: Schwab, Justin <schwab.justin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: Attorney Client / Ex. 5

Justin and Sarah

Ex. 5 - Deliberative Process/Attorney Client

Happy to talk if anyone has questions.

Elliott – please chime in if I am missing anything we need to convey at this point.

Lorie

Attorney Client / Ex. 5

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/23/2017 9:51:10 AM
To: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: Re: Please join us in welcoming Justin Schwab as our new Deputy General Counsel -- Please stop by the Front Office breakfast and say hello!

Of course!

Sent from my iPhone

On Mar 22, 2017, at 11:36 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

> Congrats!
>
> If you would be interested and can find the time, we would love to have you come to an Arlo staff meeting so that you can meet all the air attorneys.
>
> Lorie and Gautam
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> > **Date:** March 22, 2017 at 11:19:32 PM EDT
> > **To:** OGC ALL USERS <OGC_ALL_USERS@epa.gov>
> > **Subject: Please join us in welcoming Justin Schwab as our new Deputy General Counsel -- Please stop by the Front Office breakfast and say hello!**
> >
> > Hi Everyone-
> >
> > It is my pleasure to officially welcome Justin Schwab to OGC as a new Deputy General Counsel. Some of you have already met and worked with Justin as he was the legal POC for the transition team.
> >
> > Justin comes to us form Baker & Hostetler, where for the past four years he specialized in the Clean Air Act and researched and drafted briefs (including to the Supreme Court) on various environmental issues. Prior to that he clerked for two Judges, the Hon. Richard Wesley, United States Court of Appeals for the Second Circuit, and the Hon. Christine Durham, Utah Supreme Court. He is a graduate of Yale Law School, where he was Editor-in-Chief of the Yale Journal of Law & the Humanities, as well as serving as an editor on the Yale Journal on Regulation. We are looking forward to seeing his gimlet eye cast over OGC's written opinions! Justin also has a PhD in Classics from the University of California at Berkeley. So all our Cicero scholars, here's your chance to reinvigorate those rusty skills!
> >
> > Justin is sitting in 4020 and I encourage you all to come get to know him. We are delighted that he has joined the OGC team, please come to a breakfast in the Front Office Thursday morning (that's today) and welcome and/or meet him!

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/27/2017 10:12:54 PM
To: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Attorney Client / Ex. 5
Attachments:

Sent from my iPhone

Begin forwarded message:

From: "Schwab, Justin" <schwab.justin@epa.gov>
Date: April 21, 2017 at 4:28:27 PM EDT
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: Attorney Client / Ex. 5

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/3/2017 12:35:05 PM
To: Schmidt, Lorie [Schmidt.Lorie@epa.gov]

Subject: Accepted: CPP legal discussion
Location: 7340 (Lorie's office)

Start: 4/3/2017 3:00:00 PM
End: 4/3/2017 4:00:00 PM
Show Time As: Busy

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/27/2017 10:56:41 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: Fwd: paper for Administrator on WOTUS withdrawal
Attachments: WOTUS2 withdrawal options legal assessment 3-27 Final1.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

> **From:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
> **Date:** March 27, 2017 at 12:29:02 PM EDT
> **To:** "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>
> **Cc:** "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **Subject: paper for Administrator on WOTUS withdrawal**
>
> Attached is a paper for the Administrator on this issue. Kevin has reviewed.
>
> Feel free to call to discuss.
>
> Steven Neugeboren
> Associate General Counsel
> Water Law Office
> Environmental Protection Agency
> 202-564-5488

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/21/2017 1:56:25 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: Fwd: Huffington Post: Trump wants Clean Water Rule gone. Now comes the hard part., 4/20/17

Sent from my iPhone

Begin forwarded message:

From: "McGonagle, Kevin" <mcgonagle.kevin@epa.gov>
Date: April 21, 2017 at 9:48:29 AM EDT
To: "Jefferson, Gayle" <Jefferson.Gayle@epa.gov>, "Mccabe, Catherine" <McCabe.Catherine@epa.gov>, "Reeder, John" <Reeder.John@epa.gov>, "Flynn, Mike" <Flynn.Mike@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Slotkin, Ron" <slotkin.ron@epa.gov>, "Sowell, Sarah" <Sowell.Sarah@epa.gov>, "Hart, Daniel" <Hart.Daniel@epa.gov>, "Orquina, Jessica" <Orquina.Jessica@epa.gov>, "Benton, Donald" <benton.donald@epa.gov>, "Bangerter, Layne" <bangerter.layne@epa.gov>, "Davis, Patrick" <davis.patrick@epa.gov>, "Ericksen, Doug" <ericksen.doug@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Greaves, Holly" <greaves.holly@epa.gov>, "Kreutzer, David" <kreutzer.david@epa.gov>, "Munoz, Charles" <munoz.charles@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Sugiyama, George" <sugiyama.george@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Valentine, Julia" <Valentine.Julia@epa.gov>, "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Freire, JP" <Freire.JP@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Graham, Amy" <graham.amy@epa.gov>, "MacKinnon, Kathleen" <MacKinnon.Kathleen@epa.gov>, "Dibble, Christine" <Dibble.Christine@epa.gov>, "Younes, Lina" <Younes.Lina@epa.gov>, AO OPA Media Relations <AO_OPA_Media_Relations@epa.gov>, "Brennan, Thomas" <Brennan.Thomas@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Fotouhi, David" <fotouhi.david@epa.gov>, "Ford, Hayley" <ford.hayley@epa.gov>, "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
Subject: Huffington Post: Trump wants Clean Water Rule gone. Now comes the hard part., 4/20/17

Huffington Post
http://www.huffingtonpost.com/entry/trump-clean-water-rule_us_58f8f703e4b00fa7de1232e4
Trump wants Clean Water Rule gone. Now comes the hard part.
By Joseph Erbentraut 4/20/17

Donald Trump's comments on the campaign trail often were light on detail, especially when it came to environmental policy. But one regular refrain was the promise to destroy the Clean Water Rule.

The president is trying to make good on that pledge. Nearly two months ago, Trump signed an executive order directing the Environmental Protection Agency and the Army Corps of Engineers to "review and reconsider" the Obama-era regulation that was widely celebrated by environmentalists and panned by industry groups and politicians in some states.

But Trump's attempt to trash the measure, also known as the "waters of the U.S. rule," has hit roadblocks that could snarl his promise for months or years.

The Supreme Court this month denied the administration's request to delay a case intended to sort out which court should handle litigation over the rule. Environmental advocates said they plan further efforts to challenge Trump's efforts.

The Clean Water Rule, imposed by the Obama administration in 2015, clarifies which types of waterways are subject to federal protection under the Clean Water Act, the landmark 1972 law that protects the nation's water resources from pollution. Republican-led states challenged the rule in court as an overreach of executive authority, and implementation was halted while the case proceeds.

Trump's administration is preparing to repeal the rule and replace it with a weaker version, according to a recent Energy & Environment News report, which cited EPA officials. That would require two cumbersome federal rule-making processes. EPA officials did not respond to a request for comment.

The rule-making process would likely happen before the Supreme Court decides which court should handle litigation, which isn't expected until the end of the year, according to Mark Ryan, an attorney who co-authored the Clean Water Rule during his 24 years at the EPA. He said rule-making will further complicate efforts to get rid of the Clean Water Rule.

"If they're going to repeal it, they're going to have to say why they're repealing it. You can't just say, 'We're doing it because we feel like it,'" Ryan told HuffPost.

The Trump administration's rationale for repeal would come up against the lengthy scientific record that the rule is based on. Ryan said that record won't easily be refuted. Further, he said, repeal efforts will likely face public backlash and legal challenges from environmental groups.

The EPA's request for comments on the rule received more than 1 million responses. A rewrite, Ryan said, would likely receive just as many or more.
"It's going to be a huge task simply to go through the rule-making process to withdraw it," Ryan explained. "So they'll run into roadblocks trying to repeal the rule and even bigger ones to replace it."

Trump's EPA appears primed to move forward regardless.

The rule specifically protects smaller bodies of water — like streams and wetlands — along with lakes and rivers. The Trump administration appears to be aiming for a much narrower definition of protected waters.

A leaked draft of the administration's proposed rewrite of the rule would essentially mirror an opinion authored by the late Supreme Court Justice Antonin Scalia in the 2006 Rapanos v. United States case. Scalia, joined by three other justices, wrote that federal protections under the Clean Water Act should only apply to larger, navigable bodies of water.

But lower courts — as well as the EPA under both the Obama and George W. Bush administrations — have adhered to the interpretation of Justice Anthony Kennedy in his swing vote in the Rapanos case. Kennedy wrote that protected waters should include any waterways that have a "significant nexus" to navigable waters — a definition that has invited confusion, but is clearly more comprehensive than Scalia's interpretation.

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Kevin McGonagle
Office of Media Relations Intern
U.S. Environmental Protection Agency
Telephone: (202)-564-4524
mcgonagle.kevin@epa.gov

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/21/2017 12:50:11 PM
To: Zenick, Elliott [Zenick.Elliott@epa.gov]
CC: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Subject: Re: Attorney Client / Ex. 5

Ex. 5 - Deliberative Process/Attorney Client

Hope this helps with your continued learning process.

From: Schwab, Justin
Sent: Thursday, April 20, 2017 8:08:10 PM
To: Schmidt, Lorie
Cc: Dunham, Sarah; Tsirigotis, Peter; Page, Steve; Zenick, Elliott; Srinivasan, Gautam
Subject: Attorney Client / Ex. 5

Looks good. Lorie, i have left a copy with hand edits/comments on your chair.

Sent from my iPhone

On Apr 20, 2017, at 1:58 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Thank you!

Sent from my iPhone

On Apr 20, 2017, at 1:38 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Justin and Sarah

Ex. 5 - Deliberative Process/Attorney Client

Happy to talk if anyone has questions.

Elliott – please chime in if I am missing anything we need to convey at this point.

Lorie

Attorney Client / Ex. 5

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/22/2017 5:53:18 PM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]

Subject: Accepted: Attorney Client / Ex. 5
Location: 3216WJC-South

Start: 3/28/2017 8:30:00 PM
End: 3/28/2017 9:00:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/27/2017 9:09:25 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: Re: cost/benefit language approved

Ex. 5 - Deliberative Process/Attorney Client

Sent from my iPhone

On Apr 27, 2017, at 4:46 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Excellent work, Steve. I appreciate you calling the question and having a proposed path forward when you did. **Attorney Client / Ex. 5**

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

From: Neugeboren, Steven
Sent: Thursday, April 27, 2017 3:48 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Donald.e.jackson@usace.army.mil; Brown, Byron <brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Cc: FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>; Howard, MarkW <Howard.MarkW@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Cherry, Andrew

<Cherry.Andrew@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; McGartland, Al <McGartland.Al@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>
Subject: cost/benefit language approved

Samantha has approved the language I circulated earlier today (pasted below for convenience).

Attorney Client / Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Neugeboren, Steven

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/21/2017 12:07:35 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject:
Attachments:

Attorney Client / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
Date: April 20, 2017 at 1:37:59 PM EDT
To: "Schwab, Justin" <schwab.justin@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>
Cc: "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
Subject: Attorney Client / Ex. 5

Justin and Sarah

Ex. 5 - Deliberative Process/Attorney Client

Happy to talk if anyone has questions.

Elliott – please chime in if I am missing anything we need to convey at this point.

Lorie

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/17/2017 12:28:32 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Re: American Fuel & Petrochemicals Manufacturing Ass'n - Petition for Reconsideration (2016 Cellulosic Biofuel Mandate)

Yes

Sent from my iPhone

On Mar 16, 2017, at 8:19 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

> From the subject line would you have any recusal considerations?

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/16/2017 10:29:54 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Subject: Fwd: Attorney Client / Ex. 5
Attachments: Rulemaking Process 2.24.17.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>
Date: March 16, 2017 at 6:02:16 PM EDT
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>
Subject: Attorney Client / Ex. 5

Kevin & Justin Ex. 5- Deliberative Process/AC/

Ex. 5- Deliberative Process/AC/

Ex. 5- Deliberative Process/AC/

Please call me if you need additional information or ideas.

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/22/2017 10:24:55 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Packard, Elise [Packard.Elise@epa.gov]
Subject: Re: Draft Justin e-mail

Deliberative Process / Ex. 5

Other than that, while you know I am generally uncomfortable with this sort of thing, I understand this is your practice here and so I thank you for writing this.

Sent from my iPhone

On Mar 21, 2017, at 10:39 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

This works for me. Justin are you ok with it? Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: Personal Phone / Ex. 6

From: Packard, Elise
Sent: Tuesday, March 21, 2017 10:52 AM
To: Minoli, Kevin
Subject: Draft Justin e-mail

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Elise B. Packard
Acting Principal Deputy General Counsel
U.S. EPA Office of General Counsel, Rm. 4020
(202) 564-7729

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 2/14/2017 5:31:28 PM
To: Munoz, Charles [munoz.charles@epa.gov]
Subject: RE: 5 year salary history

Personal Matters / Ex. 6

From: Munoz, Charles
Sent: Tuesday, February 14, 2017 11:23 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: 5 year salary history

Include bonuses into the totals

Charles Munoz
White House Liaison
Environmental Protection Agency

From: Schwab, Justin
Sent: Tuesday, February 14, 2017 11:21 AM
To: Munoz, Charles <munoz.charles@epa.gov>
Subject: Re: 5 year salary history

Personal Matters / Ex. 6

Personal Matters / Ex. 6

Do you want bonus info as well?

Sent from my iPhone

On Feb 14, 2017, at 10:58 AM, Munoz, Charles <munoz.charles@epa.gov> wrote:

> Can you send me this again via email? I shredded the paper you gave me so an electronic version is needed now.
>
> Charles Munoz
> White House Liaison
> Environmental Protection Agency
>
> ---
>
> **From:** Schwab, Justin
> **Sent:** Wednesday, February 1, 2017 12:01 PM
> **To:** Munoz, Charles <munoz.charles@epa.gov>
> **Subject:** RE: 5 year salary history
>
> I put mine under your mouse pad.
>
> ---
>
> **From:** Munoz, Charles
> **Sent:** Wednesday, February 1, 2017 10:55 AM
> **Subject:** 5 year salary history
>
> I know some of this is redundant, so bear with me please, but I need your 5 year salary history by COB today.
>
> Thank you,
>
> Charles Munoz
> White House Liaison
> Enviromental Protection Agency

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/20/2017 11:31:07 PM
To: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: Attorney Client / Ex. 5
Attachments:

Sent from my iPhone

Begin forwarded message:

> **From:** "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
> **Date:** April 20, 2017 at 1:37:59 PM EDT
> **To:** "Schwab, Justin" <schwab.justin@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>
> **Cc:** "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
> **Subject:** Attorney Client / Ex. 5
>
> Justin and Sarah
>
> Ex. 5 - Deliberative Process/Attorney Client
>
> Happy to talk if anyone has questions.
>
> Elliott – please chime in if I am missing anything we need to convey at this point.
>
> Lorie

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/16/2017 10:20:09 PM
To: Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]
CC: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Attorney Client / Ex. 5

Thanks

Sent from my iPhone

On Mar 16, 2017, at 6:02 PM, Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov> wrote:

Kevin & Justin – Ex. 5 - Deliberative Process/AC

Ex. 5 - Deliberative Process/AC

Ex. 5 - Deliberative Process/AC

Please call me if you need additional information or ideas.

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

<Rulemaking Process 2.24.17.docx>

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/31/2017 2:02:04 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]
Subject: Attorney Client / Ex. 5

I already did. Thank you

Sent from my iPhone

On Mar 30, 2017, at 9:19 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

> Thanks Justin. We will pick it up from here and get back to Liz. Do you want me to send her a note re: your recusal but that we are on it, or would you prefer I do. Either is ok. Kevin
>
> Kevin S. Minoli
> Acting General Counsel
> Office of General Counsel
> US Environmental Protection Agency
> Main Office Line: 202-564-8040
>
> On Mar 30, 2017, at 7:33 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>
>> Kevin,
>>
>> Do you and/or Lorie want to tackle this one? If I remember correctly the identity of the party who applied for this stay means I should not be involved.
>>
>> Best,
>>
>> Justin
>>
>> Sent from my iPhone
>>
>> Begin forwarded message:
>>
>>> **From:** "Bowman, Liz" <Bowman.Liz@epa.gov>
>>> **Date:** March 30, 2017 at 7:30:32 PM EDT
>>> **To:** "Schwab, Justin" <schwab.justin@epa.gov>
>>> **Cc:** "Freire, JP" <Freire.JP@epa.gov>
>>> **Subject:** Attorney Client / Ex. 5
>>>
>>> Hi Justin – Attorney Client/DP Ex. 5
>>>
>>> Attorney Client/DP Ex. 5

Attorney Client/DP Ex. 5

Attorney Client/DP Ex. 5

Attorney Client/DP Ex. 5

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/27/2017 3:52:55 PM
To: Wendelowski, Karyn [wendelowski.karyn@epa.gov]
CC: Minoli, Kevin [Minoli.Kevin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]
Subject: Attorney Client / Ex. 5

Thanks!

Sent from my iPhone

> On Apr 27, 2017, at 11:45 AM, Wendelowski, Karyn <wendelowski.karyn@epa.gov> wrote:
>

Attorney Client / Ex. 5

Attorney Client / Ex. 5 Hope this is helpful.

> Karyn
>
>
> Karyn Wendelowski
> Attorney-Advisor
> Water Law Office
> Office of General Counsel
> (202)564-5493
>
> <Response to Vitter et al. from 10-02-13_AL-13-001-1210.pdf>

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/5/2017 10:54:52 PM
To: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Attorney Client / Ex. 5
Attachments:

See below & attached & let's discuss tomorrow

Sent from my iPhone

Begin forwarded message:

From: "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
To: "Schwab, Justin" <schwab.justin@epa.gov>
Cc: "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
Subject: Attorney Client / Ex. 5

Ex. 5 - Deliberative Process/AC/AWP

++++++++++++
202-564-5647 (o)
Personal Phone / Ex. 6 (c)

-----Original Message-----
From: Schwab, Justin
Sent: Wednesday, April 05, 2017 4:34 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Subject: Attorney Client / Ex. 5

Attorney Client / DPP / Ex. 5 Thank you.

Sent from my iPhone

On Apr 5, 2017, at 4:33 PM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Ex. 5 - Deliberative Process/AC/AWP

++++++++++++

202-564-5647 (o)

Personal Phone / Ex. 6 (c)

-----Original Message-----

From: Schwab, Justin

Sent: Wednesday, April 05, 2017 2:42 PM

To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>

Subject: Attorney Client / Ex. 5

Good afternoon!

Ex. 5 - Deliberative Process/AC/AWP

Sent from my iPhone

TTMA
TRUCK TRAILER Manufacturers Association
TTMAnet.org Since 1941

Jeffrey M. Sims • President
7001 Heritage Village Plaza • Suite 220 • Gainesville, VA 20155 • 703-549-3010

April 3, 2017

Scott Pruitt, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Elaine L. Chao, Secretary
US Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

EXECUTIVE SECRETARIAT
RECEIVED NHTSA
2017 APR -4 A 1:12

Re: Request to Reconsider and Stay Phase 2 GHG and Fuel Efficiency Standards for Truck Trailers

Dear Administrator Pruitt and Secretary Chao:

I am writing to request your immediate intervention to resolve a pending petition filed by the Truck Trailer Manufacturers Association (TTMA) in the US Court of Appeals for the District of Columbia Circuit to review the greenhouse gas fuel economy standards for heavy-duty truck trailers. TTMA's members manufacture nearly all of the heavy-duty truck trailers sold and operated in the United States. We represent over 70 trailer manufacturers with offices and plants located in over 33 states. Most of these manufacturing companies are closely-held, family-owned businesses. Our members' customers comprise cargo shippers and motor carrier fleets, large and small, as well as independent owner-operators, who together move nearly all of the nation's commercial truck freight.

The new greenhouse gas standards unlawfully treat trailers as "motor vehicles" and unwisely mandate installation of aerodynamic equipment on the vast majority of trailers, regardless of actual use. Because the industry already installs this equipment in those uses where it saves fuel, the standards will substantially burden the motor carrier industry and produce little or no additional greenhouse gas or fuel economy gain. Moreover, we believe that the President's March 28, 2017 Executive Order requiring review and, as appropriate, suspension, revision or rescission of actions arising from President Obama's June 2013 Climate Action plan directly applies to these standards. We therefore ask that EPA and NHTSA review, reconsider and begin a process to rescind these standards. We further ask EPA and NHTSA to take steps to suspend or stay the effectiveness of the standards in the interim, due to the burden of imminent steps that trailer manufacturers otherwise must take to comply. We ask to meet with you or your designees at your earliest convenience to address this matter, which is urgent for our members, their employees and customers.

* * *

S10-170404-022

ES17-000995
ED_002401_00003361-00001

1. *The Standards*. On October 25, 2016, EPA and NHTSA promulgated "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2" (GHGP2), which the agencies expressly described as having been "called for" in the 2013 Climate Action Plan. 81 Fed. Reg. 73,478, 73,480 (Oct. 25, 2016). Beginning with 2018 trailer production, the new GHGP2 standards will mandate installation of side skirts, trailer tails, low-rolling resistance tires and tire monitoring/inflation systems on most trailers manufactured and sold in the United States by TTMA's members. Trailer manufacturers must install and sell this equipment even if the trucking operations of their customers will not achieve any fuel economy benefits (such as circumstances in which the trailers will not be hauled over long distances at highway speeds sufficient to produce any benefits).

2. *Petition for Review and Deficiencies in Rule*. On December 22, 2016, TTMA petitioned for review of the trailer standards in the United States Court of Appeals for the District of Columbia Circuit (Case No. 16-1430). TTMA intends to raise several objections to the rule:

The agencies lack statutory authority. EPA's authority under the Clean Air Act to set standards for mobile sources is limited to engines and "motor vehicles," defined in the statute to mean "self-propelled vehicle[s] designed for transporting persons or property on a street or highway." 42 U.S.C. § 7550(2). Trailers are not self-propelled. Trailers are not equipped with engines that provide the power needed to transport cargo and thereby consume fuel or cause air emissions. EPA's contention that trailers are part of the motor vehicle tractor-trailer combination makes no sense. Tractors and trailers are manufactured and sold separately by different sets of manufacturers to customer populations that are not the same; a single trailer is likely to be hauled by multiple tractors during its lifetime and, conversely, a single tractor is likely to haul multiple trailers. Moreover, in the nearly fifty years since EPA has been regulating emissions from heavy-duty engines and trucks, it has never treated the trailer as part of a truck so as to fall within the definition of "motor vehicle," and there is no evidence Congress ever intended such a result. Likewise, NHTSA lacks statutory authority. Its governing authority for fuel economy standards, the Energy Independence and Security Act (EISA), also does not define heavy-duty "vehicle" to include a trailer. In the rulemaking, NHTSA has erroneously relied instead on definitions in the Motor Vehicle Safety Act, which separately authorizes NHTSA to adopt safety regulations but does not address fuel efficiency or emissions of any kind. *See* 49 U.S.C. § 30101.

The standards are arbitrary and capricious. The GHGP2 standards for trailers, if implemented, will do little to reduce greenhouse gas emissions or improve fuel economy. TTMA members and the trucking industry already participate extensively in EPA's voluntary Smartway program to develop and incorporate aerodynamic equipment in trailers where there are benefits from doing so. This is particularly true for trailers hauled regularly over long distances at highway speeds, where aerodynamic efficiency makes a measurable difference. But aerodynamic devices such as side skirts and trailer tails also add significant weight to trailers and thus are counterproductive in multiple short-run operations and at lower speeds (where most of the trailers' moving time occurs). In lower speed operations, aerodynamic efficiency is not achieved and the equipment is only counter-productive dead weight. EPA and NHTSA erroneously assumed in the rulemaking that tractor-trailers, on average, operate near highway speeds most of the time. Moreover, heavy-duty trucks are subject to an 80,000-pound maximum combined weight limit for tractor, trailer and cargo. Because the GHGP2 rule will mandate aerodynamic equipment on trailers, trucking companies who already haul loads that are at or near this limit in order to maximize efficiency will have to reduce the cargo in each load and haul the excess on additional trailers. The result will be more (and heavier) tractor-trailers on the nation's highways to haul the same total amount of freight. In addition to the costs of the aerodynamic equipment, this will add more trucks burning more fuel with more emissions, especially in low-speed service for which the additional equipment has no material benefits. It will also result in more accidents and more injuries and fatalities involving tractor-

trailers, which is contrary to NHTSA's primary mission under the Motor Vehicle Safety Act. 81 Fed Reg. at 73,642.

3. *The Executive Order Requires Review, Reconsideration and Rescission*. Section 3(d) of President Trump's March 28, 2017 Executive Order mandates that all agencies review and identify actions that are related to or arose from President Obama's June 2013 Climate Action Plan. As noted above, the GHGP2 rule, including the trailer standards, are clearly within the scope of this Order. The Order further directs that each agency shall, as soon as practicable, publish for notice and comment proposed rules suspending, revising, or rescinding any such actions, as appropriate and consistent with law and the policies stated in Section 1 of the Order. The Order states in its very first sentence as policy to avoid regulatory burdens that unnecessarily constrain economic growth and prevent job creation. Section 1 goes on to elaborate as policy that environmental regulations must comply with the law, have greater benefits than costs, and rely on the best available peer-reviewed science and economics. For the reasons described above, the trailer requirements in the GHGP2 rule conflict with these policies.

Furthermore, we note that in seeking to justify the costs as outweighing the benefits of the GHGP2 rule, EPA relied on the Obama Administration's "social cost of carbon." *See* 81 Fed. Reg. at 73,875 (explaining that the agencies "estimate the global social benefits of CO_2 emission reductions expected from the heavy-duty GHG and fuel efficiency standards using the social cost of carbon"). The March 28 Executive Order directed that the prior Administration's social cost of carbon analyses be withdrawn, and that, effective immediately, agencies shall ensure that estimates used in valuing the GHG impacts of regulations be consistent with OMB Circular A-4 (Sept. 17, 2003). The Order specifically directed that this include the approach to considering domestic versus international impacts and the consideration of the appropriate discount rates. Accordingly, the Order directs a new approach, effective immediately, that is different from and in conflict with the approach EPA used to justify the GHGP2 standards, which the Order makes clear is "no longer representative of government policy." Not only does this constitute a further policy reason to revisit the trailer requirements, but it constitutes centrally relevant new information warranting reconsideration of the rule under Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B).

4. *EPA Action is Urgent to Avoid Substantial Economic Impacts*. As anticipated in the directive of Section 3(d) of the Executive Order that the agencies take action "as soon as practicable," this matter is of great time sensitivity to TTMA's members. Although the GHGP2 standards apply to trailers manufactured after January 1, 2018, the standards will have costly impacts on trailer manufacturers in the latter half of 2017. The manufacturers will soon have to quote and commit in advance to trailer orders for production in 2018, and they will soon begin incurring substantial expenditures for parts inventory and for reconfiguring manufacturing plants and assembly lines to enable installation of the required devices. These are, in many cases, small- to medium-sized businesses throughout the country who can ill afford the unnecessary burdens of these standards, which will impact them, their employees, customers and the economy at large.

TTMA would like to meet with you or your designees to seek an immediate path to reconsideration of the GHGP2 trailer requirements and an approach to stay the effectiveness of the rule in the interim to avoid the burden and disruption of imminent steps to comply. We very much appreciate your attention to this important matter and your consideration of our requests on an expedited basis.

Sincerely,

Jeff Sims, President

S10-170404-022

ED_002401_00003361-00004

Sender: You must seal flap before shipping.

Press here to seal. Press here to seal. Press here to seal.

ORIGIN ID:CKXA (703) 549-3010
JEFF SIMS

7001 HERITAGE VILLAGE PLAZA
SUITE 220
GAINESVILLE, VA 20155
UNITED STATES US

SHIP DATE: 03APR17
ACTWGT:
CAD: 107973149/INET3850

BILL SENDER

TO ELAINE L. CHAO
US DEPARTMENT OF TRANSPORTATION
1200 NEW JERSEY AVENUE, SE

WASHINGTON DC 20590
(855) 368-4200 REF
INV
PO DEPT

546.2/CFD6/5301

RT 739 1 16:00 1996 04.04 FZ

FedEx Express

E

TUE - 04 APR 3:00P
STANDARD OVERNIGHT

TRK# 0201 7788 0736 1996

20590
DC-US IAD

19 XSMA

S10-170404-022

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/16/2017 6:26:18 PM
To: Administrator / Ex. 6

Subject: Accepted: WOTUS Rule
Location: Administrator's Office

Start: 3/17/2017 5:30:00 PM
End: 3/17/2017 6:00:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/5/2017 10:41:10 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
CC: Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Orlin, David [Orlin.David@epa.gov]
Subject: Attorney Client / Ex. 5

Thanks!

Sent from my iPhone

> On Apr 5, 2017, at 5:27 PM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:
>

Ex. 5 - Deliberative Process/AC/AWP

> ++++++++++++
> 202-564-5647 (o)
Personal Phone / Ex. 6 (c)

> -----Original Message-----
> From: Schwab, Justin
> Sent: Wednesday, April 05, 2017 4:34 PM
> To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
> Cc: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
> Subject: Attorney Client / Ex. 5
>
Attorney Client / DPP / Ex. 5 Thank you.
>
> Sent from my iPhone
>
>> On Apr 5, 2017, at 4:33 PM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:
>>

Ex. 5 - Deliberative Process/AC/AWP

>> ++++++++++++
>> 202-564-5647 (o)
Personal Phone / Ex. 6 (c)

>> -----Original Message-----
>> From: Schwab, Justin
>> Sent: Wednesday, April 05, 2017 2:42 PM
>> To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
>> Subject: Attorney Client / Ex. 5
>>
>> Good afternoon!

Ex. 5 - Deliberative Process/AC/AWP

>> Sent from my iPhone
> <17-0995 INCOMING(1).pdf>

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/27/2017 2:09:11 PM
To: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: Do you need me at CPP meeting tomorrow?

If so, when and where is it?

Sent from my iPhone

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/27/2017 3:02:07 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Fwd: CPP proposed repeal
Attachments: CPP Proposal.FR Notice.4.21.17.RLSO.docx; ATT00001.htm; CPP Proposal.FR Notice.4.21.17.draft.docx; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

> **From:** "Schwab, Justin" <schwab.justin@epa.gov>
> **Date:** April 21, 2017 at 4:29:54 PM EDT
> **To:** "Fotouhi, David" <fotouhi.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
> **Cc:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **Subject: FW: CPP proposed repeal**
>
> FYI – will be giving Ryan the clean copy in print form momentarily
>
> ---
>
> **From:** Schmidt, Lorie
> **Sent:** Friday, April 21, 2017 4:27 PM
> **To:** Schwab, Justin <schwab.justin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
> **Cc:** Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
> **Subject:** CPP proposed repeal
>
> **Attorney Client / Ex. 5**
>
> Justin – would you like me to get hard copy to you or Ryan?
>
> Lorie

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/5/2017 10:40:35 PM
To: Moran, John S. EOP/WHO EOP / Ex. 6

Subject: Accepted: WOTUS EO
Location: JSM to Circulate Dial-In

Start: 4/6/2017 2:45:00 PM
End: 4/6/2017 3:15:00 PM

Recurrence: (none)

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/16/2017 3:43:59 PM
To: Administrator / Ex. 6

Subject: Accepted: WOTUS Rules Options
Location: Administrator's Office

Start: 3/20/2017 3:00:00 PM
End: 3/20/2017 4:00:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/27/2017 1:37:36 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Attorney Client / Ex. 5

I'm not sure either but if it is, I will. Thanks.

Sent from my iPhone

> On Mar 27, 2017, at 9:36 AM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:
>
> Hey Justin Attorney Client / Ex. 5
Attorney Client / Ex. 5
>
> Kevin S. Minoli
> Acting General Counsel
> Office of General Counsel
> US Environmental Protection Agency
> Main Office Line: 202-564-8040

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/16/2017 2:30:24 PM
To: Adm14Pruitt, Scott [adm14pruitt.scott@epa.gov]

Subject: Accepted: WOTUS Meeting
Location: Administrator's Office

Start: 3/17/2017 5:30:00 PM
End: 3/17/2017 6:00:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/21/2017 2:13:17 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: RE: Do you have any free time for Attorney Client / Ex. 5

Totally agree. Thanks for thinking of this.

-----Original Message-----
From: Minoli, Kevin
Sent: Tuesday, March 21, 2017 9:56 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Subject: Re: Do you have any free time for Attorney Client / Ex. 5

Attorney Client / Ex. 5

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

> On Mar 21, 2017, at 8:53 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>
> If so we should meet on it asap
>
> Sent from my iPhone

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/27/2017 1:05:16 PM
To: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: Fwd:
Attachments: Attorney Client / Ex. 5 ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
Date: March 24, 2017 at 7:18:38 PM EDT
To: "Schwab, Justin" <schwab.justin@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Cc: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Harvey, Reid" <Harvey.Reid@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>

Justin and Kevin

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/20/2017 4:29:41 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: draft litigation report for Moran

Please add anything I'm recused from and pass on to him copying me (unless we need to discuss further). Please use your judgment on whether this is all appropriate for circulation outside this building at this stage.

His prompt:

Deliberative Process / Attorney Client / Ex. 5

My input (culled from Kevin's weekly reports/informed by my own knowledge):

Energy Sector/Air

Deliberative Process / Attorney Client / Ex. 5

Water

Deliberative Process / Attorney Client / Ex. 5

Chemicals

Deliberative Process / Attorney Client / Ex. 5

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/21/2017 1:46:11 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]

Subject: Accepted: CPP (Call in number: EOP / Ex. 6
Location: DCRoomARN4045/DC-Ariel-Rios-OGC

Start: 3/21/2017 5:30:00 PM
End: 3/21/2017 6:00:00 PM
Show Time As: Busy

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/30/2017 1:12:40 PM
To: Cozad, David [Cozad.David@epa.gov]
Subject: Re: reminder re: next Wednesday meeting

Also please invite Bolen.brittany@epa.gov (new OP deputy)

Sent from my iPhone

On Mar 30, 2017, at 8:33 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Attorney Client / Ex. 5

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/27/2017 12:43:59 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]

Subject: Tentative: Waters of the US activity
Location: 3513A

Start: 3/27/2017 2:00:00 PM
End: 3/27/2017 2:30:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/26/2017 12:30:29 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: RE: ARLO Hot Issues

Yes, that's why we had to change the time in the first place. Not sure why it went back to 10. I will see if Sarah is okay with neither of us being at WOTUS but short of that, I probably can't be at ARLO at 10

-----Original Message-----
From: Fotouhi, David
Sent: Wednesday, April 26, 2017 8:28 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: ARLO Hot Issues

I don't think this time works for either of us. From 10-11, I had planned to attend a briefing on MATS for Sarah Dunham and Mandy, and Justin had planned to attend the weekly WOTUS meeting with WLO, OW, and the Corps.

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

-----Original Message-----
From: Minoli, Kevin
Sent: Wednesday, April 26, 2017 8:26 AM
To: Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: ARLO Hot Issues

Good Morning- With it moving back to 10:00, are you both still able to attend? Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/26/2017 12:27:12 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: RE: ARLO Hot Issues

This now directly conflicts with WOTUS - David, please remind me, am I right that you can't go to WOTUS or ARLO and therefore need me to go to WOTUS (the reason for changing it in the first place)?

I am not sure I need to be at WOTUS and will try to get Sarah to confirm that it's okay if neither DF nor I are there

-----Original Message-----
From: Minoli, Kevin
Sent: Wednesday, April 26, 2017 8:26 AM
To: Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: ARLO Hot Issues

Good Morning- With it moving back to 10:00, are you both still able to attend? Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/21/2017 1:28:40 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]

Subject: Accepted: CPP (Call in number: EOP / Ex. 6
Location: DCRoomARN4045/DC-Ariel-Rios-OGC

Start: 3/21/2017 5:30:00 PM
End: 3/21/2017 6:00:00 PM

Recurrence: (none)

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/4/2017 10:01:25 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]

Subject: Accepted: Call with OMB - WOTUS and CPP
Location: Samantha's Office - 3505

Start: 4/4/2017 7:00:00 PM
End: 4/4/2017 7:45:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/26/2017 8:37:15 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Subject: Re: Waters of the US activity

Yes

Sent from my iPhone

On Mar 26, 2017, at 4:29 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

> Talk tmrw?
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "McGartland, Al" <McGartland.Al@epa.gov>
> > **Date:** March 26, 2017 at 4:28:06 PM EDT
> > **To:** "Dravis, Samantha" <dravis.samantha@epa.gov>
> > **Cc:** "Nickerson, William" <Nickerson.William@epa.gov>
> > **Subject: Waters of the US activity**
> >
> > Hi Samantha.
> >
> > As promised, last Friday, the Office of Water provided a short description of the analysis they would do for the WOTUS rulemaking. Deliberative Process / Ex. 5
> >
> > Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/21/2017 11:11:55 AM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]

Subject: Fwd: CPP
Location: DCRoomARN4045/DC-Ariel-Rios-OGC

Start: 3/21/2017 5:45:00 PM
End: 3/21/2017 6:15:00 PM
Show Time As: Tentative

FYI - cpp in 4045 at 1:45, you should come if you're free

Sent from my iPhone

Begin forwarded message:

> **From:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **To:** "Schwab, Justin" <schwab.justin@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Talty, Mark" <Talty.Mark@epa.gov>, "Simons, Andrew" <Simons.Andrew@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Jordan, Scott" <Jordan.Scott@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
> **Subject: CPP**

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/25/2017 8:55:21 PM
To: Shapiro, Mike [Shapiro.Mike@epa.gov]

Subject: Accepted: WOTUS Call in Conference Line/Code / Ex. 6
Location: 3233 WJCE

Start: 4/26/2017 2:00:00 PM
End: 4/26/2017 2:45:00 PM

Recurrence: (none)

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/21/2017 11:10:32 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]

Subject: Accepted: CPP
Location: DCRoomARN4045/DC-Ariel-Rios-OGC

Start: 3/21/2017 5:45:00 PM
End: 3/21/2017 6:15:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/1/2017 11:59:03 AM
To: julietschwab@gmail.com
Subject: Fwd: Gentle reminder from OGC/Ethics: Any transactions to report?

?

Sent from my iPhone

Begin forwarded message:

From: DCOGCLN1/DC/USEPA/US <DCOGCLN1/DC/USEPA/US@epamail.epa.gov>
Date: March 1, 2017 at 3:01:02 AM EST
To: Justin Schwab <Schwab.Justin@epamail.epa.gov>
Subject: Gentle reminder from OGC/Ethics: Any transactions to report?

---- This is your gentle reminder from OGC/Ethics: Do you have a periodic transaction to report?? ----

Dear 278 Filer –

Because you file the OGE 278e, you are also required to file periodic transaction reports using the OGE 278T using INTEGRITY, the new online financial disclosure system created and maintained by the Office of Government Ethics (https://www.integrity.gov). You must file a periodic transaction report when you purchase, sell, or exchange certain investments like stocks, bonds, commodities futures, options or other forms of securities if the amount of the transaction exceeds $1,000. These transactions are reportable even if they occur within brokerage accounts, managed accounts, or other investment vehicles that you own or that are owned by anyone else whose interests are imputed to you (i.e., spouse and/or dependent children).

Please note that not all transactions are reportable on this periodic basis. Don't report transactions of less than $1000 at a time. And you don't have to file a 278T for transactions involving investments such as mutual funds, exchange traded funds, real estate, or U.S. Treasury notes.

If you have a reportable periodic transaction, then you must file the OGE 278T in INTEGRITY within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You can be fined $200 for any missed periodic report. If you don't have any reportable transactions, then don't submit a negative report. Keep track of your transactions because even if they aren't reportable periodically, they may still be reportable Schedule B of your next annual filing. Also, the INTEGRITY system will allow you to upload your transactions automatically into the appropriate annual report.

For more assistance on INTEGRITY, check out the OGC/Ethics help page at:
http://intranet.epa.gov/ogc/Integrity/Landingpage.html

Thanks!

The OGC/Ethics team

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/25/2017 5:49:15 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Attorney Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

Sent from my iPhone

On Apr 25, 2017, at 1:46 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

<!--[if lte mso 15 || CheckWebRef]-->

Greenwalt, Sarah has shared a OneDrive for Business file with you. To view it, click the link below.

<image00001.png> Attorney Client / Ex. 5

<!--[endif]-->
Steve - Attached is a redline of the preamble. A few other thoughts:

Deliberative Process / Attorney-Client / Ex. 5

Let me know if you have any other questions for me.

Sarah A. Greenwalt
Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: Personal Phone / Ex. 6
Greenwalt.Sarah@epa.gov

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/1/2017 11:58:35 AM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
CC: Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Re: Hot Issues meeting at 10:15- recusal issues

Sounds good. Thanks for the head up.

Sent from my iPhone

> On Mar 1, 2017, at 6:18 AM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:
>
> Hi Justin- We will be discussing the Juliana case and the Ozone NAAQS litigation at the 10:15 Hot Issues meeting. I believe you are recused from both cases. We don't have anything else substantive on the agenda at this point. Assuming I am right about your recusals, I think that means you can take a pass on the meeting.
>
> Lorie- If there's a topic I don't know about, please correct the above.
>
> ++++++++++++
> (202) 564-5647 (o)
> Personal Phone / Ex. 6 (c)

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/24/2017 10:47:33 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Attorney Client / Ex. 5

Thank you

Sent from my iPhone

> On Mar 24, 2017, at 6:30 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:
>
> In case you are looking for weekend reading. Kevin
>
>
> Kevin S. Minoli
> Acting General Counsel
> Office of General Counsel
> US Environmental Protection Agency
> Main Office Line: 202-564-8040
>
> From: Kupchan, Simma
> Sent: Friday, March 24, 2017 3:22 PM
> To: Minoli, Kevin <Minoli.Kevin@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>
> Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
> Subject: Attorney Client / Ex. 5
>
> Kevin,
>

Attorney Client / Ex. 5

>
> Thanks,
>
> Simma Kupchan
> Water Law Office
> US EPA Office of General Counsel
> William Jefferson Clinton Building North Room 7426Q
> (p) 202-564-3105
>

Attorney Client / Ex. 5

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/19/2017 1:43:09 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; McGartland, Al [McGartland.Al@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]
Subject: Re: WOTUS and CPP Conference Line/Code / Ex. 6

I can do that. David will also come but he has to leave at 11:15

Sent from my iPhone

On Apr 19, 2017, at 9:42 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

> Please try to come to my office at 11 if at all possible.
>
> -----Original Appointment-----
> **From:** Catanzaro, Michael J. EOP/WHO EOP / Ex. 6
> **Sent:** Wednesday, April 19, 2017 9:39 AM
> **To:** Dravis, Samantha
> **Subject:** New Time Proposed: WOTUS and CPP Call Conference Line/Code / Ex. 6
> **When:** Wednesday, April 19, 2017 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).
> **Where:** DCRoomARN3500/OPEI

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/14/2017 3:56:29 PM
To: Cozad, David [Cozad.David@epa.gov]
CC: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Shinkman, Susan [Shinkman.Susan@epa.gov]
Subject: Re: Clean Water Rule

Thanks!

Sent from my iPhone

On Mar 14, 2017, at 11:55 AM, Cozad, David <Cozad.David@epa.gov> wrote:

Hi,

Attorney Client / Ex. 5

FYI, I will forward you under separate cover another relevant email Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Thanks

Dave

From: Shinkman, Susan
Sent: Monday, March 13, 2017 4:17 PM
To: Cozad, David <Cozad.David@epa.gov>
Cc: Pollins, Mark <Pollins.Mark@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: FW: Clean Water Rule

Dave,

Below is the email I sent out to all enforcement staff, On October 15, 2015, after the Rule was stayed.

I will follow this email with a copy of the email from Cynthia, attaching a memo from me dated October 1, 2015, giving instructions for enforcement of the Rule, prior to the nation-wide stay.

Susan

From: Shinkman, Susan
Sent: Thursday, October 15, 2015 6:03 AM
To: Regional Counsel Contacts <Regional_Counsel_Contacts@epa.gov>; Enforcement Division Directors <Enforcement_Division_Directors@epa.gov>; OECA-OCE-WED <OECAOCEWED@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Washington, Debra <Washington.Debra@epa.gov>; Ellis, Krystle <Ellis.Krystle@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Bunnell, Julia <Bunnell.Julia@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Kenney, James <Kenney.James@epa.gov>; Kabler, Lauren <Kabler.Lauren@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Lott, Don <Lott.Don@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; McCray, Deborah <Mccray.Deborah@epa.gov>; Miles, James <miles.james@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Schefski, Kenneth <Schefski.Kenneth@epa.gov>; Stedeford, Todd <Stedeford.Todd@epa.gov>; Stewart, Andrew <Stewart.Andrew@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>
Cc: Giles-AA, Cynthia <Giles-AA.Cynthia@epa.gov>; Wilson, Shari <Wilson.Shari@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: Clean Water Rule

On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the Clean Water Rule nationwide pending further action of the court. In light of this nationwide stay, Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Should you have any questions please contact me or your staff may contact Melissa Katz at (303) 312-6842, or Andrew Cherry at (202) 564-2589.

Thanks,
Susan

Susan Shinkman
Director, Office of Civil Enforcement
U.S. Environmental Protection Agency
Washington, DC
202-564-3257

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you.

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/29/2017 6:55:14 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Fwd: Attorney Client / Ex. 5

See below & attached

Sent from my iPhone

Begin forwarded message:

> **From:** "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
> **Date:** March 29, 2017 at 11:21:41 AM EDT
> **To:** "Schwab, Justin" <schwab.justin@epa.gov>
> **Subject: Re:** Attorney Client / Ex. 5
>
> Hey Justin, can you send me a copy of the reply brief DOJ will be filing?
>
> Sent from my iPhone
>
> On Mar 29, 2017, at 11:16 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>
>> Sent from my iPhone
>>
>> Begin forwarded message:
>>
>> > **From:** "Cozad, David" <Cozad.David@epa.gov>
>> > **Date:** March 29, 2017 at 10:54:14 AM EDT
>> > **To:** "Schwab, Justin" <schwab.justin@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>
>> > **Cc:** "Shinkman, Susan" <Shinkman.Susan@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
>> > **Subject:** Attorney Client / Ex. 5
>> >
>> > Hi,
>> >
>> > **Deliberative Process / Attorney Client / Ex. 5 / Ex. 7(a), 7(e)**

Deliberative Process / Attorney Client / Ex. 5 / Ex. 7(a), 7(e)

Dave Cozad
Acting PDAA, OECA
Office 202-564-4861
Cell Personal Phone / Ex. 6

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/19/2017 1:01:27 PM
To: Albores, Richard [Albores.Richard@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
CC: Jones, Gail-R [Jones.Gail-R@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Trudeau, Shaun [Trudeau.Shaun@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: RE: 4/19/17 ARLO Hot Issues Agenda

Thank you. I am recused from the only matter on the agenda, so David will be there in my stead and I will attend a WOTUS meeting in his.

From: Albores, Richard
Sent: Wednesday, April 19, 2017 9:00 AM
To: Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Jones, Gail-R <Jones.Gail-R@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>; Trudeau, Shaun <Trudeau.Shaun@epa.gov>
Subject: Fwd: 4/19/17 ARLO Hot Issues Agenda

FYI.

R

Sent from my iPhone

Begin forwarded message:

> **From:** "Graham, Cheryl" <Graham.Cheryl@epa.gov>
> **Date:** April 19, 2017 at 6:18:20 AM EDT
> **To:** OGC Immediate Office All <OGC_Immediate_Office_All@epa.gov>
> **Cc:** "Jones, Gail-R" <Jones.Gail-R@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
> **Subject: 4/19/17 ARLO Hot Issues Agenda**

Cheryl R. Graham
Cheryl R. Graham
OGC/ARLO
(202) 564-5473

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 2/8/2017 1:41:35 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Re: Recusal Check

No, not recused. Thanks for checking.

Sent from my iPhone

On Feb 7, 2017, at 7:45 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

> Just because this is a MACT case, before I send you something I want to make sure you are not recused from the following:
>
> *Sierra Club v. EPA*, No. 15-1246, which is a challenge to "our finding that we have met our CAA 112(c)(6) obligation to issue MACT air toxic standards for source categories that emit 90% of seven specific HAPS (hazardous air pollutants)."
>
> Let me know. Thanks! Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 2/27/2017 9:17:39 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Schnare, David [schnare.david@epa.gov]
Subject: Attorney Client / Ex. 5
Attachments: Attorney Client / Ex. 5 .docx

DRAFT DELIBERATIVE DOCUMENT
PRIVILEGED AND CONFIDENTIAL

Ryan and David,

Byron and I have tweaked the draft that Kevin circulated earlier this afternoon. Please find attached. Let us know if you want us to circulate this back to OGC.

Best,

Justin

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/25/2017 3:07:10 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject:
Attachments: Attorney Client / Ex. 5

Please find attached

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/19/2017 12:47:56 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: Re: 4/19/17 ARLO Hot Issues Agenda

Yes please

Sent from my iPhone

On Apr 19, 2017, at 8:43 AM, Fotouhi, David <fotouhi.david@epa.gov> wrote:

> Great. **Deliberative Process / Ex. 5** Let me know if you need me to forward it.
>
> **David Fotouhi**
>
> Deputy General Counsel
> Office of General Counsel
> U.S. Environmental Protection Agency
> Tel: +1 202.564.1976
> fotouhi.david@epa.gov
>
> **From:** Schwab, Justin
> **Sent:** Wednesday, April 19, 2017 8:43 AM
> **To:** Fotouhi, David <fotouhi.david@epa.gov>
> **Subject:** Re: 4/19/17 ARLO Hot Issues Agenda
>
> I can go to wotus if you go to arlo.
>
> Sent from my iPhone
>
> On Apr 19, 2017, at 8:25 AM, Fotouhi, David <fotouhi.david@epa.gov> wrote:
>
>> Since you are recused from Juliana, would you be able to go to WOTUS and I'll cover ARLO? If you would rather attend the Air briefing with Sarah than the WOTUS meeting, let me know and I'll ask ARLO to reschedule hot issues.
>>
>> **David Fotouhi**
>>
>> Deputy General Counsel
>> Office of General Counsel
>> U.S. Environmental Protection Agency
>> Tel: +1 202.564.1976
>> fotouhi.david@epa.gov
>>
>> **From:** Graham, Cheryl
>> **Sent:** Wednesday, April 19, 2017 6:18 AM
>> **To:** OGC Immediate Office All <OGC_Immediate_Office_All@epa.gov>
>> **Cc:** Jones, Gail-R <Jones.Gail-R@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
>> **Subject:** 4/19/17 ARLO Hot Issues Agenda

Cheryl R. Graham
Cheryl R. Graham
OGC/ARLO
(202) 564-5473

<April 19 17 Hot Issues.docx>

<Juliana 3rd round litigation hold.docx>

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/24/2017 7:34:39 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Subject: Fwd: Greka - DOJ call

Sent from my iPhone

Begin forwarded message:

From: "Shinkman, Susan" <Shinkman.Susan@epa.gov>
Date: April 24, 2017 at 1:42:13 PM EDT
To: "Schwab, Justin" <schwab.justin@epa.gov>, "Fotouhi, David" <fotouhi.david@epa.gov>
Cc: "Cozad, David" <Cozad.David@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Subject: Greka - DOJ call

Justin and David,

Ex. 5 - Attorney Client/Attorney Work Product

Please let us know if you want additional information or want to discuss it.

Thanks,
Susan

Susan Shinkman
Director, Office of Civil Enforcement
U.S. Environmental Protection Agency
Washington, DC
202-564-3257

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you.

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/20/2017 1:04:17 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]

Subject: Tentative: WOTUS Prep.
Location: 4000

Start: 3/20/2017 2:15:00 PM
End: 3/20/2017 3:00:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 3/19/2017 8:52:23 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Re:

Jeff wood at DOJ should know.

jeffrey.wood@usdoj.gov

If he is also recused then Brandon Middleton should be able to discuss

Brandon.Middleton@usdoj.gov

For that matter, Kevin Minoli in our OGC is likely to know the current status of the litigation (or be able to find out quickly).

Sent from my iPhone

On Mar 19, 2017, at 4:44 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> I don't know. I'm recused from that litigation.
>
> Sent from my iPhone
>
>> On Mar 19, 2017, at 4:31 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:
>>
>> Has DOJ held the wotus case in abeyance?
>>
>> Ryan Jackson
>> Chief of Staff
>> U.S. EPA
>> (202) 564-6999

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/29/2017 12:50:28 PM
To: Whitfield, Peter C. [peter.whitfield@hoganlovells.com]
Subject: RE: Trump EO

https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economi-1

From: Whitfield, Peter C. [mailto:peter.whitfield@hoganlovells.com]
Sent: Tuesday, March 28, 2017 4:11 PM
To: Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Trump EO

Thanks – Inside EPA has sent out two stories on it today, but no EO attached. I was trying to figure out how they have a copy that nobody else has.

Peter Whitfield
Senior Associate

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Tel: +1 202 637 5600
Direct: +1 202 637 3685
Fax: +1 202 637 5910
Email: peter.whitfield@hoganlovells.com
www.hoganlovells.com

Please consider the environment before printing this e-mail.

From: Schwab, Justin [mailto:schwab.justin@epa.gov]
Sent: Tuesday, March 28, 2017 4:10 PM
To: Whitfield, Peter C.
Subject: RE: Trump EO

I don't think I have a copy of the EO as signed today. If the White House doesn't have it, surely Inside EPA or E&E will have it soon….

From: Whitfield, Peter C. [mailto:peter.whitfield@hoganlovells.com]
Sent: Tuesday, March 28, 2017 4:08 PM
To: Schwab, Justin <schwab.justin@epa.gov>
Subject: Trump EO

Justin,

Any chance you have a copy of the executive order released today regarding climate change policy/CPP? I'm seeing news on it, but no actual EO.
Thanks,
Peter

Peter Whitfield
Senior Associate

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Tel: +1 202 637 5600
Direct: +1 202 637 3685
Fax: +1 202 637 5910
Email: peter.whitfield@hoganlovells.com
www.hoganlovells.com

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Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/18/2017 5:35:04 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]

Subject: Accepted: WOTUS and CPP Call - Conference Line/Code / Ex. 6
Location: DCRoomARN3500/OPEI

Start: 4/18/2017 7:30:00 PM
End: 4/18/2017 8:15:00 PM

Recurrence: (none)

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 2/4/2017 2:49:15 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: Re: Docket survey meeting?

Thanks!!

Sent from my iPhone

> On Feb 4, 2017, at 9:37 AM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:
>
> Hi Justin- We have two meetings a week with ARLO, a "reg review" on Mondays that is more like a docket review and a "hot issues" on Wednesdays to cover a few issues a bit more in depth. I will invite you to both. We will work with your recusal list to hold the things you are recused from to the end. Kevin
>
> Kevin S. Minoli
> Acting General Counsel
> Office of General Counsel
> US Environmental Protection Agency
> Main Office Line: 202-564-8040
>
>> On Feb 4, 2017, at 8:04 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>>
>> Lorie & Gautam -
>>
>> Given ARLO's disproportionate share of the overall OGC docket, and my greater familiarity with/interest in this area than some others, do you think it would be useful for me to meet on a regular basis (weekly or biweekly?) with one or both of you to survey upcoming filings, arguments, etc., in your office?
>>
>> Alternatively/additionally, if your office has a standing meeting of this nature, I would like to be included in it (as well as on any associated listservs, etc).
>>
>> Best,
>>
>> Justin
>>
>> Sent from my iPhone

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/12/2017 2:04:37 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: Re: WOTUS plans -- E&E News

No.

Sent from my iPhone

On Apr 12, 2017, at 9:53 AM, Fotouhi, David <fotouhi.david@epa.gov> wrote:

FYI—do you know anything about this?

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Bowman, Liz
Sent: Wednesday, April 12, 2017 9:27 AM
To: Valentine, Julia <Valentine.Julia@epa.gov>
Cc: Freire, JP <Freire.JP@epa.gov>; Konkus, John <konkus.john@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: FW: WOTUS plans -- E&E News

Deliberative Process / Ex. 5

From: Ariel Wittenberg [mailto:awittenberg@eenews.net]
Sent: Wednesday, April 12, 2017 8:20 AM
To: Press <Press@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: WOTUS plans -- E&E News

Hi John and Nancy,

Was hoping to confirm something I've been hearing from a few people that someone from the EPA spoke at a meeting of the Association of State Wetland Managers yesterday and discussed plans to repeal and revise WOTUS. What I've heard is that someone from EPA Headquarters (It was scheduled to be Benita Best-Wong but someone else came instead) said that the EPA intends to hold two separate rulemaking processes to fulfill President Trump's Executive Order. The first would issue a proposal to rescind WOTUS and replace it with the 1986 regulations. The second would begin a new rulemaking to issue a new definition of "Waters of the U.S.". I was hoping you could please confirm this and also tell me who it was that replaced Benita at the meeting. Also, any further comment would be appreciated. My deadline is 11:30 today,

Thanks,

Ariel

Ariel Wittenberg
E&E News reporter
awittenberg@eenews.net
202-737-4557
@arielwittenberg

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Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/12/2017 1:00:18 AM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: Ex. 5 - AC/AWP

Good idea

Sent from my iPhone

On Apr 11, 2017, at 8:32 PM, Fotouhi, David <fotouhi.david@epa.gov> wrote:

Sounds good. Maybe going forward we should do a weekly catch-up meeting on all pending DOJ cases.

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Schwab, Justin
Sent: Tuesday, April 11, 2017 8:30 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: Ex. 5 - AC/AWP

I'm not recused.

Ex. 5 - AC/AWP e

Sent from my iPhone

On Apr 11, 2017, at 8:04 PM, Fotouhi, David <fotouhi.david@epa.gov> wrote:

Sorry—another recusal question—are you able to brief Mandy on Ex. 5 - AC/AWP should proceed with filing the complaint, or do I need to handle?

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 2/24/2017 2:11:59 PM
To: Brandon.Middleton@usdoj.gov
Subject: EPA legal contacts where Schwab is recused

[contact information below, following my current recusal status]

As discussed, I am recused from:

- ***West Virginia v. EPA*** (111(d) existing-source GHG rule under Clean Power Plan) [permanent recusal]
- ***Michigan v. EPA*** (Mercury Rule/CAMR/MATS) [permanent recusal]
-and the ***Juliana*** public-trust climate-change litigation (D. Or.) [2-year recusal d/t impartiality regs]

In addition, I will be recused for some time from matters directly involving as parties the state governments of **Arizona, Oklahoma, and Virginia**.

These state-party recusals (as with *Juliana*, *supra*) will eventually expire when the 2-year Trump Administration extension of the 1-year impartiality regulation time period for "covered relationships" expires in due course, on a rolling basis.

Best,

Justin

***

David Schnare
schnare.david@epa.gov
desk: 202-564-3073
cell: Personal Phone / Ex. 6

George Sugiyama
Sugiyama.george@epa.gov
desk: 202-564-3054
cell: Personal Phone / Ex. 6

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/13/2017 4:28:37 PM
To: Cozad, David [Cozad.David@epa.gov]; Shinkman, Susan [Shinkman.Susan@epa.gov]
CC: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Subject: Ex. 5 - AC/AWP

Good afternoon!

Ex. 5 - AC/AWP

Best,

Justin

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/11/2017 4:59:47 PM
To: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
CC: David Fotouhi [Fotouhi.David@epamail.epa.gov]; Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Jones, Gail-R [Jones.Gail-R@epa.gov]; Justin Schwab [Schwab.Justin@epamail.epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Trudeau, Shaun [Trudeau.Shaun@epa.gov]
Subject: **Attorney Client Deliberative / Ex. 5**

I should be removed from this one

Sent from my iPhone

On Apr 11, 2017, at 12:31 PM, Lorie Schmidt <Schmidt.Lorie@epamail.epa.gov> wrote:

Scott Jordan has submitted a package with the case name/subject of **Attorney Client Deliberative / Ex. 5**

Attorney Client Deliberative / Ex. 5

Please click the link below to see the routing and transmittal record for this package. After reviewing the package please:

* go to the Routed To section;
* route 2 line; and
* select the Add Comments button, or the Make Decision button.

LINK **Internal URL Ex. 6**

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/11/2017 4:01:39 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: Re: Call to discuss air enforcement/defense matters

Yes

Sent from my iPhone

> On Apr 11, 2017, at 12:00 PM, Fotouhi, David <fotouhi.david@epa.gov> wrote:
>
> Do you have flexibility with this time? I have a WOTUS meeting from 5-5:45.
>
> David Fotouhi
>
> Deputy General Counsel
> Office of General Counsel
> U.S. Environmental Protection Agency
> Tel: +1 202.564.1976
> fotouhi.david@epa.gov
>
> -----Original Message-----
> From: Schwab, Justin
> Sent: Tuesday, April 11, 2017 11:48 AM
> To: Wood, Jeffrey (ENRD) <Jeffrey.Wood@usdoj.gov>
> Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
> Subject: Re: Call to discuss air enforcement/defense matters
>
> Of those times, 5 pm tomorrow is best for me
>
> Sent from my iPhone
>
>> On Apr 11, 2017, at 11:42 AM, Wood, Jeffrey (ENRD) <Jeffrey.Wood@usdoj.gov> wrote:
>>
>> Would 5pm today work? Or 1pm or 5pm tomorrow?
>>
>> -----Original Message-----
>> From: Schwab, Justin [mailto:schwab.justin@epa.gov]
>> Sent: Tuesday, April 11, 2017 11:26 AM
>> To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Wood, Jeffrey (ENRD) <JWood@ENRD.USDOJ.GOV>
>> Cc: Fotouhi, David <fotouhi.david@epa.gov>
>> Subject: Call to discuss air enforcement/defense matters
>>
>> Mandy and Jeff,
>>
>> There are a number of pressing items we need to discuss.
>>
>> (David, there are some from which I am recused which you may need to coordinate discussion on, and you are of course welcome to participate in the entire discussion.)
>>
>> We should try to have a call on this soon - perhaps tomorrow (Wed 4/12)?
>>
>> Best,
>>
>> Justin
>>
>> Sent from my iPhone

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/28/2017 7:39:55 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Fwd: CPP proposed repeal
Attachments: CPP Proposal.FR Notice.4.21.17.RLSO.docx; ATT00001.htm; CPP Proposal.FR Notice.4.21.17.draft.docx; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Schwab, Justin" <schwab.justin@epa.gov>
Date: April 21, 2017 at 4:29:54 PM EDT
To: "Fotouhi, David" <fotouhi.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
Cc: "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Subject: FW: CPP proposed repeal

FYI – will be giving Ryan the clean copy in print form momentarily

---

From: Schmidt, Lorie
Sent: Friday, April 21, 2017 4:27 PM
To: Schwab, Justin <schwab.justin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: CPP proposed repeal

Attorney Client / Ex. 5

Justin – would you like me to get hard copy to you or Ryan?

Lorie

Message

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/28/2017 7:37:04 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Re: CPP and WOTUS

I will forward to you what I sent to RJ last Friday. Don't know if anyone else has changed it since then

Sent from my iPhone

On Apr 28, 2017, at 2:24 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote

> Could you please send me the latest and greatest drafts of both CPP and WOTUS for this 4pm meeting we lare having?

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 3/24/2017 6:28:31 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]
CC: Prabhu, Aditi [Prabhu.Aditi@epa.gov]
Subject: Fwd: Petition for Reconsideration
Attachments: Letter to EPA Submitting Petition for Reconsideration w_exhibits-c.pdf; ATT00001.htm

FYI

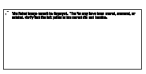
Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Potter, Barbara" <bpotter@hunton.com>
To: "Pruitt, Scott" <Pruitt.Scott@epa.gov>
Cc: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "O'Donnell, Jessica (ENRD)" <Jessica.O'Donnell@usdoj.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "OW-Docket" <OW-Docket@epa.gov>, "Johnson, Harry M. ("Pete")" <pjohnson@hunton.com>, "Bulleit, Kristy" <kbulleit@hunton.com>
Subject: Petition for Reconsideration

Administrator Pruitt, attached is the Utility Water Act Group's Petition for Reconsideration of EPA's Final Rule for Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category. If you have questions, please do not hesitate to contact either Pete Johnson (804-788-8784; pjohnson@hunton.com) or Kristy Bulleit (202-955-1547; kbulleit@hunton.com).

Thank you.



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DIRECT DIAL: 804 • 788 • 8784
EMAIL: pjohnson@hunton.com

FILE NO: 29142.080072

March 24, 2017

By U.S. Mail and E-mail

Docket No. EPA-HQ-OW-2009-0819

Mr. Scott Pruitt, Administrator
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Re: **Utility Water Act Group Petition for Reconsideration of EPA's "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category; Final Rule," 80 Fed. Reg. 67,838 (Nov. 3, 2015)**

Dear Administrator Pruitt:

Enclosed please find the Utility Water Act Group's Petition for Reconsideration of EPA's final rule titled "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category," 80 Fed. Reg. 67,838 (Nov. 3, 2015). A copy of this petition has also been electronically mailed to the Office of Water Docket Center for filing in Docket No. EPA-HQ-OW-2009-0819.

Please contact me if you have any questions about the Petition.

Sincerely,

Pete Johnson / bhp

Harry M. ("Pete") Johnson III

Enclosure

HUNTON& WILLIAMS

cc by hand delivery and e-mail:
Mr. Michael H. Shapiro

Cc by e-mail:
Jessica O'Donnell, Esq.
Kevin S. Minoli, Esq.
EPA Docket Center

In the United States Environmental Protection Agency

Utility Water Act Group's Petition for Rulemaking to Reconsider and Administratively Stay the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category; Final Rule, 80 Fed. Reg. 67,838-903 (Nov. 3, 2015)

Kristy A. N. Bulleit
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804-788-8784 (tel.)
pjohnson@hunton.com
ealdridge@hunton.com

Counsel for Petitioner Utility Water Act Group

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RELIEF SOUGHT

The Utility Water Act Group[1] ("UWAG") hereby petitions the United States Environmental Protection Agency ("EPA") pursuant to 5 U.S.C. § 553(e) for a rulemaking to reconsider the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category; Final Rule (the "ELG Rule," the "Final Rule," or "Rule").[2] UWAG also seeks an administrative stay of the Rule pursuant to 5 U.S.C. § 705 because the Rule is currently in litigation[3] and "justice so requires."[4] Furthermore, the EPA should take all other administrative

---

[1] UWAG is a voluntary, *ad hoc*, non-profit, unincorporated group of 163 individual energy companies and three national trade associations of energy companies: the Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association. The individual energy companies operate power plants and other facilities that generate, transmit, and distribute electricity to residential, commercial, industrial, and institutional customers. The Edison Electric Institute is the association of U.S. shareholder-owned energy companies, international affiliates, and industry associates. EEI members serve 220 million Americans in all 50 states, approximately 70 percent of all retail electricity customers in the country. The National Rural Electric Cooperative Association is the association of not-for-profit energy cooperatives supplying central station service through generation, transmission, and distribution of electricity to rural areas of the United States. The American Public Power Association is the national service organization for the more than 2,000 not-for-profit, community-owned electric utilities in the U.S. APPA member utilities serve more than 48 million Americans in 49 states (all but Hawaii), representing 16 percent of the market. UWAG's purpose is to participate on behalf of its members in EPA's rulemakings under the Clean Water Act and in litigation arising from those rulemakings.

[2] Section 553(e) provides that interested persons have "the right to petition for the issuance, amendment, or repeal of a rule."

[3] *Southwestern Elec. Power Co. v. EPA*, et al, No. 15-60821(L) (5th Cir.) (consolidating seven separate Petitions for Review) ("ELG Litigation").

[4] The administrative stay under 5 U.S.C. § 705 should postpone all deadlines in the Rule. The length of the stay should be calculated based on the number of days between the date that the first Petition for Review was filed in a federal court of appeals (November 19, 2015) and the later of the conclusion of judicial review or any further rulemaking undertaken as a result of that litigation or reconsideration undertaken in response to this Petition.

actions that may be necessary to assure the immediate suspension or delay of the Rule's fast-approaching compliance deadlines while EPA works to reconsider and revise, as appropriate, the substantive requirements of the current Rule pursuant to notice and comment rulemaking.

INTRODUCTION

I. Overview of Reasons to Reconsider the Rule

UWAG petitions EPA to reconsider the Rule to address its numerous flaws. Some of those flaws are explained in detail in the pending ELG Litigation and others are demonstrated by new information and circumstances described in this petition. The Rule – which is the product of a settlement between environmental groups and EPA – is inconsistent with the President's regulatory reform agenda reflected in recent Executive Orders.

The Rule affects both the utility and coal industries and also affects the large and small businesses that support and rely upon those industries. It will cause negative impacts on jobs due to the excessive costs of compliance – which were grossly underestimated by EPA – and regulatory burdens forcing plant closures. Those impacts are being, and will be, felt in communities around the country where those industries operate. Reconsideration will enable the Agency to take all of these impacts into account to the full extent allowed by law, as contemplated by recent Executive Orders.

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The cost issues are exacerbated by EPA's overly ambitious assumptions about facilities' ability to comply with the limits imposed in the Rule. In fact, in many instances, facilities are not able to meet the limits with the technologies that EPA identified as the "best available technology economically achievable" ("BAT"). Actual costs are, therefore, much higher than EPA predicted. Either plants cannot comply at all or they are being forced to design, test, and try unproven technologies in addition to, or in lieu of, the model technologies in the hope of developing a compliance strategy. The Rule should be reconsidered so that its true costs can be accounted for, as required by the Clean Water Act ("CWA").

It is also undisputed that the Rule fails to consider fully the cumulative impacts of the Rule and the other contemporaneous major rulemakings affecting these industries. The cumulative cost of all of those rules affecting the utility and coal industries is staggering. In addition to the issue of costs, the respective rules' compliance deadlines were not harmonized to minimize or eliminate their conflicts. In the ELG rulemaking, EPA did not take public comment on the impacts of all of the rules combined. Undoubtedly, the industry's views could have been – and can be – informative. Consistent with the Administration's regulatory reform agenda, reconsideration of the ELG Rule will allow EPA to

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consider all of these major rules collectively – and not through a piecemeal approach – with the benefit of public input.[5]

In addition, the Rule violated fundamental principles of public participation in rulemakings – transparency and reproducibility. Never before has EPA promulgated a rule while shielding such vast amounts of its basic work product from review. Here, EPA invoked the concept of Confidential Business Information ("CBI") to withhold facts, methods, and analyses on which its conclusions depend. To an unprecedented extent, the Agency withheld fundamental information purporting to justify the Rule. Among the information claimed as CBI, EPA designated as CBI thousands of pages of the record that demonstrably were not entitled to confidential treatment.

Compounding the lack of transparency and reproducibility, EPA repeatedly responded to public comments by citing key information that the Agency withheld from the public record. Directing commenters to information that is unavailable is effectively no response at all. Reconsideration will allow EPA to fix these problems.

---

[5] Moreover, since promulgation of the ELG Rule, circumstances have changed for the Clean Power Plan ("CPP") and the Coal Combustion Residuals ("CCR") Rule. Now, it is unclear the extent to which the CPP Rule will take effect or what changes to the CCR Rule will be made since portions of it are the subject of a new rulemaking. These significant changes in circumstances alone warrant reconsideration of the ELG Rule.

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EPA also promulgated the Rule without gathering necessary data on certain types of plants covered by the Rule. EPA gathered no data whatsoever on the treatability of selenium and nitrates in Flue Gas Desulfurization Wastewater ("FGDW") produced by plants burning subbituminous coals, such as Powder River Basin ("PRB") coal, or lignite. These plants comprise upwards of 25% of the industry. Likewise, EPA set limits for modern Integrated Gasification Combined-Cycle ("IGCC") plants without gathering data relevant to those plants. Lacking data or any other credible evaluation of the likely performance and cost, EPA had no reasonable basis for concluding that those plants can comply with the limits imposed by the Rule. The Rule should be re-opened and reconsidered so that the applicable limits can be based on appropriate data.

Actual experience is confirming that the FGD limits cannot be met at all facilities. A recent pilot study using the biological treatment technology EPA selected as BAT has been conducted at a PRB-burning plant, and indications are that the data show the selenium limits cannot be met. Other facilities are finding that technologies beyond those considered by EPA may be necessary to meet the FGD limits. Similarly, data from a state-of-the-art IGCC plant prove that it cannot meet the Rule's wastewater limits.

Finally, EPA used patently obsolete or otherwise unreliable data in its analyses supporting its "zero discharge" requirement for bottom ash transport

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water ("BATW"). In violation of both the letter and spirit of the Data Quality Act[6] and its implementing regulations, EPA evaluated BATW with poor quality characterization data, some of which was decades old. EPA used the data for several important purposes, including calculating a cost-effectiveness ratio that allows the Agency to compare the ELG Rule to other effluent guidelines rules. Obviously, if the underlying BATW characterization data are flawed, then the cost-effectiveness analysis is also flawed. Although EPA insisted a cost-effectiveness analysis is not required by the CWA, the Agency generated these analyses for all recent effluent guidelines rules, and it had an obligation to base its analysis on acceptable data. This it did not do.

All of these issues, both together and individually, warrant reconsideration of the ELG Rule to promote the President's regulatory reform agenda.

II. The Policies Established by Executive Orders on Regulatory Reform

The President has established an agenda mandating regulatory reform.[7] Reconsideration of the Rule is essential to fulfill the policies expressed in the Regulatory Reform Order.

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[6] Pub. L. 106-554, § 1(a)(3), Title V, § 515 (Dec. 21, 2000) (also sometimes known as "Information Quality Act").

[7] *See* Executive Order 13777, *Enforcing the Regulatory Reform Agenda* (Feb. 24, 2017), 82 Fed. Reg. 12,285 (Mar. 1, 2017) ("Regulatory Reform Order").

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The Regulatory Reform Order directs agencies to create Task Forces to "evaluate existing regulations … and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law."[8] The Task Forces have until May 25, 2017, to make their recommendations.[9] The Rule should be chief among the EPA Task Force's recommendations, for all the reasons set forth in this Petition.

The Task Forces are charged *at a minimum* with identifying regulations that adversely affect jobs, that impose costs exceeding benefits, or that rely on information and methods that are not transparent and reproducible.[10] The Rule

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[8] *Id.* at 12,286.

[9] By imposing a rigorous deadline on the Task Force, the Regulatory Reform Order recognizes the urgency of addressing overly burdensome regulations. Ultimately, it is the customers of the electric utility industry who suffer the economic burden of exorbitantly expensive rules. This burden is exacerbated when important issues regarding those rules go unresolved for extended periods of time (*e.g.*, the Mercury and Air Toxics rule). Uncertainty also contributes to potential instability in energy delivery. Thus, in the spirit of the Regulatory Reform Order, the Agency should move expeditiously to reconsider and revise the Rule while suspending its deadlines in the meanwhile.

[10] *Id.* § 3(d). The Order reads: "At a minimum, each Regulatory Reform Task Force shall attempt to identify regulations that:

> (i) eliminate jobs, or inhibit job creation; …
>
> (iii) impose costs that exceed benefits; … [or]
>
> (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility;..."

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here meets *all three* of these criteria, as explained in more detail in the body of this Petition.[11]

Moreover, this Petition for Reconsideration satisfies another mandatory element of the Regulatory Reform Order – consultation with "entities significantly affected" by the Rule.[12] The Order directs that the Task Forces "shall seek input and other assistance" from stakeholders in identifying regulations with adverse effects:

> In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.[13]

Finally, the Regulatory Reform Order also incorporates fundamental principles from earlier Executive Orders that likewise support reconsideration of the Rule. For instance, agencies must consider the cumulative costs of regulations on businesses and communities:

> Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other

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[11] As to the second criterion (costs exceeding benefits), EPA's cost-benefit analysis was based so heavily on flawed or unavailable data that a full evaluation of the Rule's true costs and benefits is effectively impossible based on the current record. Thus, a primary focus on reconsideration should be to develop a record that will allow the Agency to determine whether the benefits indeed outweigh the costs of a new rule.

[12] *Id.* § 3(e).

[13] *Id.*

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> entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, *taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.*[14]

As detailed later in this Petition, the Rule fails to consider accurately the cumulative costs of EPA's major rules affecting the utility industry, the coal industry, and the communities depending on them.

In addition to the Regulatory Reform Order, the Rule also should be reconsidered as part of the Agency's compliance with the Executive Order 13771, popularly known as the "Two-for-One Order."[15] In addition to its other directives, the Two-for-One Order requires agencies to achieve a net incremental regulatory cost of zero in Fiscal 2017.[16] The costs of new regulations during the current fiscal year are offset by costs eliminated from existing regulations: "incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations."[17]

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[14] Executive Order 12866, *Regulatory Planning and Review* § 1(b)(11) (Sept. 30, 1993), 58 Fed. Reg. 51,735, 51,736 (Oct. 4, 1993) (emphasis added) (incorporated by reference in Regulatory Reform Order § 2(a)(ii)).

[15] *Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs* (Jan. 30, 2017), 82 Fed. Reg. 9339 (Feb. 3, 2017).

[16] "For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero,..." *Id.* § 2(b).

[17] *Id.* § 2(c).

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By reconsidering the Rule and taking its costs properly into account when promulgating a revised ELG rule, EPA can discharge this obligation.

In carrying out its duties under the Regulatory Reform Order, the Agency must comply with the Administrative Procedure Act ("APA") and other applicable law.[18] Granting this Petition would enable EPA to promote the express policy of the Two-for-One Order consistent with the APA.

BACKGROUND ON RULE AND PENDING ELG LITIGATION

I. The Consent Decree Leading Up to the Final Rule

The ELG Rule is the product of a lawsuit. On September 14, 2009, the EPA Administrator received a 60-day notice of intent from the Environmental Integrity Project, which threatened to sue EPA for not revising the steam electric effluent limitations guidelines ("ELGs"). The very next day, EPA announced plans to revise the guidelines.[19] The next month, EPA released a "final detailed report" on its investigation of the industry for possible ELG revision.[20]

On November 8, 2010, Defenders of Wildlife and Sierra Club sued EPA and asked the court to set a judicial schedule for the rulemaking. But the plaintiffs had

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[18] *Id.*

[19] Press Release, EPA, *EPA Expects to Revise Rules for Wastewater Discharges from Power Plants* (Sept. 15, 2009).

[20] EPA, *Steam Electric Power Generating Point Source Category: Final Detailed Study Report*, EPA-821-R-09-008 (Oct. 2009), EPA-HQ-OW-2009-0819-0004 ("Final Detailed Study").

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already settled with EPA. That same day, EPA and the environmental organizations jointly presented a Consent Decree to the court. As part of the settlement, EPA agreed to pay the plaintiffs $40,000 for the costs of negotiating, drafting, and filing the consent decree.[21] Thus, the rulemaking proceeded pursuant to a schedule imposed by a court order agreed to by environmental organizations and EPA without input from the industry and other affected stakeholders. Nonetheless, whenever possible – as during the comment periods on EPA's information collection request for the Rule – the industry urged EPA to collect representative data and provided recommendations for doing so.[22]

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[21] UWAG moved to intervene in the litigation, asserting that the district court did not have subject matter jurisdiction over the matter because the CWA by its terms does not require EPA to revise ELGs by a date certain, instead requiring only that the Agency periodically review those guidelines – a duty that the facts pled showed EPA had discharged. The court denied UWAG's motion to intervene. *See Defenders of Wildlife v. Jackson,* 284 F.R.D. 1 (D.D.C. 2012). On appeal, the United States Court of Appeals of the D.C. Circuit found that UWAG lacked standing to challenge the rulemaking negotiated between EPA and environmental groups. *Defenders of Wildlife v. Perciaseppe,* 714 F.3d 1317 (D.C. Cir. 2013).

[22] *See, e.g.,* UWAG Comments on EPA's Draft Data Request (Mar. 23, 2007), EPA-HQ-OW-2009-0819-5450-Att 079 at 6 (commenting that EPA's plan to collect wastewater samples from 5-6 facilities would result in a dataset too small for valid correlations because even two plants burning the same coal and using similar technologies could have different wastewater quality due to factors such as boiler design, coal variations within the same coal rank, and size of treatment equipment or settling pond). *See also* UWAG Comments on Questionnaire for the Steam Electric Power Generating Effluent Guidelines, EPA ICR No. 2368.01 (Apr. 8, 2010), EPA-HQ-OW-2009-0819-0052 at 14-21 (questioning the practical utility of the ICR's focus on CCRs, when the proposed CCR rule was soon to be released and would radically change management of CCRs).

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II. Promulgation of the Final Rule

EPA proposed the Rule on June 7, 2013.[23] The public comment period lasted until September 20, 2013. Between the end of the comment period and the promulgation of the Final Rule, EPA promulgated a suite of other major rules directed at coal-fired electric generating units. These included the Cooling Water Intake Structures ("CWIS") rule for existing facilities,[24] the CCR rule,[25] the CPP rule,[26] and the Carbon Pollution Standard for New Power Plants rule ("CPS").[27] EPA estimates the annualized total social costs[28] of the ELG and CWIS rules will be $471.2-479.5 million (2013$) and $274.9 million (2011$), respectively.[29] The Agency estimates the total annualized incremental costs of the CCR rule will be $509-735 million (2013$) (over 100 years).[30] The CPP is in a class by itself, with EPA predicting annual illustrative compliance costs of $1.4-2.5 billion (2020), $1.0-3.0 billion (2025), and $5.1-8.4 billion (2050) (all in 2011$).[31] Many of

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[23] 78 Fed. Reg. 34,432 (June 7, 2013).

[24] 79 Fed. Reg. 48,300 (Aug. 15, 2014).

[25] 80 Fed. Reg. 21,302 (Apr. 17, 2015).

[26] 80 Fed. Reg. 64,662 (Oct. 23, 2015).

[27] 80 Fed. Reg. 64,510 (Oct. 23, 2015).

[28] "Total social costs" includes compliance costs to facilities and government administrative costs.

[29] 80 Fed. Reg. at 67,865 (ELG Rule); 79 Fed. Reg. at 48,415 (CWIS Rule).

[30] 80 Fed. Reg. at 21,309.

[31] 80 Fed. Reg. at 64,680-81.

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those costs have been challenged as underestimates. In any event, it must be remembered that, ultimately, these billions in costs will be borne by utilities' ratepayers.

The Final ELG Rule was published on November 3, 2015.[32]

III. The Litigation Challenging the ELG Rule

Various petitioners filed seven petitions for judicial review of the Rule in multiple courts. The petitions were consolidated in the United States Court of Appeals for the Fifth Circuit.[33] Three separate groups of Petitioners (including UWAG as an industry petitioner) filed their opening briefs on December 5, 2016. EPA's brief is due May 4, 2017.[34]

IV. UWAG's Attempts to Obtain a Complete Record from EPA

When it promulgated the Final Rule, EPA improperly designated and withheld numerous documents in whole or in part on grounds of CBI. UWAG tried unsuccessfully to resolve these issues with EPA long before EPA finalized the administrative record and filed the certified index in the ELG Litigation. In a letter dated February 17, 2016, counsel for UWAG and others wrote to counsel for

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[32] 80 Fed. Reg. 67,838-903 (Nov. 3, 2015).

[33] Consolidation Order, Judicial Panel on Multidistrict Litigation, ELG Litigation, ECF No. 00513301255 (Dec. 9, 2015).

[34] EPA's brief had been due April 4, 2017. On March 20, 2017, EPA filed a Motion to stay the briefing schedule for 30 days due to DOJ's unexpected reassignment of the case to new counsel. The Court granted the extension on March 21. However, the Rule itself is not stayed during this period. Hence, this Petition seeks an administrative stay of the Rule and/or other action to suspend the Rule's deadlines.

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EPA seeking the disclosure of "EPA's methodologies and analyses supporting the ELG Rule that have been improperly withheld as … CBI," and additional "non-CBI information … improperly withheld from the public record."[35] In response, EPA refused to produce any additional information for the public record.[36] In fact, EPA apparently could not find a single *sentence or word* of additional information that could be disclosed despite clear evidence that the broad use of CBI designations was inappropriate.

Because the withheld information was critical to understanding the basis for the Rule, UWAG and others industry members thereafter filed a joint motion to complete the record in the Court of Appeals. The motion asked simply for EPA to reconsider whether the information withheld as CBI in fact qualified as CBI and for EPA to produce its methods and analyses in a non-CBI format for the public and the Court. EPA continued to resist the requests. The motion is still pending and is to be decided by the Court in conjunction with the merits of the appeal.

REASONS TO RECONSIDER THE RULE

I. EPA's Sweeping Use of CBI To Withhold Its Methods and Analyses Violated Principles of Transparency

EPA withheld its most basic data, methodologies, and analyses from the public record under the guise of CBI. This unprecedented lack of openness is

[35] Exhibit 1 at 1.

[36] Exhibit 2.

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inconsistent with the policies articulated in Regulatory Reform Order for transparency and reproducibility. EPA has a duty to disclose the information supporting the Rule and to fully explain its course of inquiry, analysis, and reasoning. EPA has at its disposal tools that allow it to protect CBI, if necessary, yet EPA used none of them here, instead withholding at least 1,194 documents in whole or in part.

A. The Overreliance on CBI Is Inconsistent With the Data Quality Act and Agency Guidelines on Transparency and Reproducibility

In 2001, Congress enacted Public Law 106-554 ("Data Quality Act") directing OMB to issue guidance for ensuring the quality of data disseminated by Federal agencies by maximizing the objectivity, utility, and integrity of the information collected. OMB responded to the Data Quality Act by issuing guidelines for data quality and directing agencies to issue their own guidelines.[37] In turn, EPA issued its guidelines.[38] The Regulatory Reform Order expressly requires Task Forces to identify regulations that are inconsistent with the Data Quality Act or the guidance issued pursuant to it, "*in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly*

[37] OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, Republication*, 67 Fed. Reg. 8452 (Feb. 22, 2002) ("OMB Data Quality Guidelines").

[38] EPA, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency*, EPA/260R-02-008 (Oct. 2002) ("EPA Data Quality Guidelines").

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available or that are insufficiently transparent to meet the standard for reproducibility."[39] The Rule meets this definition squarely.

According to the OMB Data Quality Guidelines, agency information must satisfy the "objectivity" criterion of the Data Quality Act, meaning "a focus on ensuring accurate, reliable, and unbiased information."[40] EPA describes the objectivity criterion similarly: "'Objectivity' focuses on whether the disseminated information …, as a matter of substance, is accurate, reliable, and unbiased."[41]

Because the record in a major rulemaking is considered to be an "influential" class of information, EPA expressly recognizes that such information is subject to a heightened standard of quality.[42] This "higher degree of quality" requires even greater "transparency about data and methods" to "facilitate the reproducibility of such information…."[43] Indeed, it is "important that analytic results for influential information have a higher degree of transparency…."[44]

EPA's conclusions in the Rule, as shown below, do not meet the definition of "reproducibility" as a result of the heavy use of CBI:

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[39] Regulatory Reform Order § 3(d)(v), 82 Fed. Reg. at 12,286 (emphasis added).

[40] OMB Data Quality Guidelines at 8459.

[41] EPA Data Quality Guidelines at 15.

[42] *Id.* at 20 ("should adhere to a rigorous standard of quality").

[43] *Id.* at 20-21.

[44] *Id.* at 21.

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> "Reproducibility" means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision.... With respect to analytic results, "capable of being substantially reproduced" means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.[45]

Likewise, EPA's conclusions in the Rule do not meet its own guidelines for reproducibility:

> In addition, these Guidelines provide for the use of especially rigorous "robustness checks" and documentation of what checks were undertaken. *These steps, along with transparency about the sources of data used, various assumptions employed, analytic methods applied, and statistical procedures employed should assure that analytic results are "capable of being substantially reproduced."*[46]

Protections for CBI do not automatically dispense with the requirements of reproducibility. The OMB Data Quality Guidelines provide for situations where data cannot be released for valid reasons, and the guidelines impose alternative requirements:

> i. Making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.
>
> ii. In situations where public access to data and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document

[45] OMB Data Quality Guidelines at 8460.

[46] EPA Data Quality Guidelines, Appendix A at 47 (emphasis added).

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> what checks were undertaken. *Agency guidelines shall, however, in all cases, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed.*[47]

These heightened standards of transparency and reproducibility lay out a clear analytical process for each individual assertion of CBI by EPA. Is the information in fact CBI? If not, EPA must make it available to the public with the Rule. If the information is CBI, then EPA must perform "especially rigorous robustness checks," disclose the sources of information, and disclose the specific quantitative methods and assumptions used.

The record supporting the Rule did not meet the requirements for reproducibility, regardless of whether EPA's individual claims of CBI were valid. In many instances documented below and in the ELG Litigation,[48] the CBI claims were specious on their face. In other instances where the CBI designation may or may not be warranted, there is scant evidence of "robustness checks," documentation of those checks, or other assurances of reproducibility, such as sources of data, various assumptions applied, and analytic methods applied. Thus, the industry and the public have been unable to evaluate the Rule fully.

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[47] OMB Data Quality Guidelines at 8460 (emphasis added). *See also* EPA Data Quality Guidelines at 21 (implementing same).

[48] *See* Industry Petitioners' Joint Motion to Complete the Administrative Record, ELG Litigation (June 22, 2016), ECF No. 00513560826 ("Motion to Complete Record"); Original Brief of Industry Petitioners, ELG Litigation (Dec. 5, 2016), ECF No. 00513783903 at 24-51.

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Reconsideration is appropriate to allow meaningful public participation consistent with the policies of the Regulatory Reform Order.

B. EPA Can Make the Relevant Information Available Without Compromising CBI

EPA has available a variety of tools to present facts and analyses on which it relied, while at the same time protecting CBI. It has used those tools in many other effluent guidelines rulemakings.[49] EPA could, for instance, produce ranges of values, graphs, cost formulas or curves, discussions, or other analyses, as appropriate, to satisfy its obligations to present the "whole record" for review, including its methodologies and analyses, without disclosing CBI.[50]

In addition, EPA could have simply taken the time to collect more data that are not CBI. It could have supplemented the CBI information with information from other sources or consultants who would not assert CBI. Likewise, EPA could have conducted or commissioned its own studies to independently verify the information claimed as CBI. Reconsideration would allow this.

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[49] *See, e.g.*, EPA, *Development Document for Final Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category* (Apr. 2002), at 1-9, 14-3–14-6 (aggregating certain data in the public record and masking facility identities) (available at http://www.epa.gov/eg/iron-and-steel-manufacturing-effluent-guidelines-documents) (last accessed Dec. 2, 2016).

[50] *See NRDC v. Thomas*, 805 F.2d 410, 418 n.13 (D.C. Cir. 1986).

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C. EPA Has Not Been Transparent About the Cost or Performance of BAT for FGD Wastewater or Bottom Ash Transport Water

Congress has limited EPA's discretion in the selection of BAT by identifying specific factors the Agency must consider.[51] Because BAT must be "economically achievable," one such factor EPA must consider is cost.[52] The cost of regulations is also a policy priority under the Regulatory Reform Order. The CWA further requires EPA to consider the performance of the technology at reducing pollutants.[53] Performance and cost go hand-in-hand, as improving performance may require adding more technology, which then increases cost. The interplay of cost and performance is also a point of emphasis in the Regulatory Reform Order, which mandates a focus on cost-benefit analyses.

EPA bears the burden of demonstrating that it has considered the cost of the technology it chose as BAT and showing that the technology, at the cost EPA projected, will achieve the performance standards it set. Here, EPA's explanation of its performance and cost estimates for the technologies it chose as BAT for FGDW and BATW were general conclusions with crucial detail missing.

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[51] 33 U.S.C. § 1314(b)(2)(B).

[52] *Id.* ("Factors relating to the assessment of best available technology shall take into account … the cost of achieving such effluent reduction….").

[53] *Id.* at § 1314(b)(2)(A); *see E. I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112, 131 (1977).

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At the proposed rule stage, EPA discussed these technologies and its methodologies and analyses for evaluating their cost. EPA provided significantly more detail about its methodologies when it published the proposed ELG rule for public comment.[54] When EPA then took comments from the public, it learned – and in some instances even acknowledged – that its performance and cost analyses had shortcomings, overstating performance and understating cost.[55] This meant that EPA was required to collect additional information, make changes, and explain the changes in the Final Rule.

Transparency in the Final Rule was even more vital because EPA's errors at proposal were not trivial. For example, comments on the proposed Rule showed that, industry-wide, the cost of installing biological treatment alone for FGDW would nearly exceed EPA's estimated costs for adding both biological treatment and chemical precipitation treatment.[56] Indeed, one company's comments showed that the cost of installing EPA's selected FGDW treatment technology at its plants would be nearly *seven times higher* than EPA had estimated for a subset of those

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[54] *See, e.g.*, Index.2292.6-88–6-105. [This Petition uses the same convention for citations to EPA's administrative record as in the Litigation by referring to the Certified Index. *See* Original Brief of Industry Petitioners at 5 n.11.]

[55] *See, e.g.*, Index.10081.6-665 (EPA agreeing with commenters who indicated that EPA should consider engineering-related costs and construction timelines associated with closed-loop bottom ash handling retrofits).

[56] *See* Index.8939.A-25 (finding incremental biological costs of over $2 billion).

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same plants.[57] Similarly, the Electric Power Research Institute ("EPRI")[58] was unable to reproduce EPA's conclusions regarding the ability of biological treatment to remove pollutants from FGDW.[59] Based on EPRI's calculations, EPA had overestimated pollutant removals for biological treatment by a factor of eight.[60]

EPA's cost estimate for achieving no-discharge of BATW was likewise off by a wide margin. For example, after identifying a host of errors and omissions, EPRI calculated total industry capital costs for conversion from wet to dry bottom ash handling, just for plants with a nameplate generating capacity above 400 megawatts, to be over $6 billion and $452 million in annual O&M costs – more than double EPA's estimate.[61]

1. EPA Has Withheld Key Information Showing How the Agency Responded to Criticisms of Its Original Analyses

EPA responded to these comments by soliciting revised information from financially interested vendors. These are the same vendors whose technology was at issue and who had incentives to tout their systems as effective and reasonably

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[57] Index.8689.160 (Southern Company).

[58] EPRI is an independent, nonprofit organization that conducts research and development relating to the generation, delivery, and use of electricity.

[59] Index.8939.4-2.

[60] *Id.* at 4-1.

[61] Index.8939.8-2.

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priced. Much of the revised information – *and how EPA incorporated it into the final analyses* – was withheld. Thus, the public cannot determine whether EPA in fact corrected the original errors or whether the revised analyses are themselves appropriate. This flies in the face of the APA and the directives of the Regulatory Reform Order.

As Industry Petitioners have described at length, EPA's contacts with vendors demonstrate how EPA consciously chose to conceal the substance of its final cost analysis.[62] EPA prepared follow-up questions for one vendor "to clarify whether specific cost elements [identified by commenters] are included or not included in the cost estimates provided in previous correspondence," among other things.[63] The vendor responded to these questions, but that information has been withheld from the public record.[64]

Notes of subsequent meetings and correspondence between EPA and the vendor are similarly missing from the public record, nearly always in their entirety.[65] These inaccessible documents go to the heart of how EPA addressed the cost issue.

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[62] *See* Original Brief of Industry Petitioners at 30-32, 39-40.

[63] Post Proposal Questions for GE_for EPA Review, Index.11564.3.

[64] *See* CBI_GE Response to Post Proposal Questions, Index.11680.

[65] *See* Original Brief of Industry Petitioners at 30-32, 39-40.

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2. In the Final Rule, EPA Hid Cost and Effectiveness Data, Methodologies, and Analyses Behind CBI

a. Cost

Using CBI as a pretext, EPA provided only its bare conclusions in the public record regarding many of its cost analyses. The Agency has not provided supporting detail for those analyses (anonymized or otherwise). Despite comments showing that EPA had omitted or grossly underestimated various costs for the proposed rule and despite the fact that EPA *added* new technology requirements, these final costs inexplicably *decreased* on a per-plant basis for FGDW. The average capital cost per plant went from just over $21.5 million for the Proposed Rule to approximately $20.5 million for the Final Rule.[66] And the average annual O&M costs went from approximately $2.2 million to approximately $1.4 million.[67]

EPA's revised cost figures cry out for explanation. Yet, EPA suggests only that it considered public comments and changed its analysis "where appropriate," but without ever explaining *how*.[68] This is not transparency, and it certainly eliminates any opportunity for reproducibility.

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[66] *Compare* Index.2920.9-28 *with* Index.12840.9-32.

[67] *Id.* (averages were calculated by dividing total industry cost by number of plants).

[68] *See, e.g.,* Index.12840.3-20 ("EPA evaluated public comments to identify plant-specific operation and flow data and, where appropriate, used this information to revise estimates of compliance costs and pollutant removals for those facilities….").

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Despite the requirement to explain what it did, EPA withheld the underlying data, methodologies, and analyses under the guise of CBI. For example, they are missing from EPA's *Final Sanitized Steam Electric Incremental Costs and Pollutant Loadings Report* ("Final ICPR"), which EPA points to as "describ[ing] the methodologies used to estimate plant-specific compliance costs … associated with installing and operating the various technologies and practices that make up the regulatory options considered by EPA to revise the existing ELGs."[69] Unquestionably, this document was central to EPA's development of the Final Rule, yet information necessary to reproduce EPA's results is absent.

The Final ICPR is the only document that described EPA's consideration of costs and pollutant removals in full. The Final Technical Development Document[70] referred directly to the ICPR for detailed explanations of EPA's methodology.[71] Despite EPA's express reliance on this key document, the referenced subsections were redacted *in their entirety*. Again, this flies in the face of transparency and reproducibility.

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[69] Index.12134.1-1.

[70] EPA, *Technical Development Document for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, EPA-821-R-15-007 (Sept. 2015), EPA-HQ-OW-2009-0819-6432 ("TDD"),

[71] *See, e.g.,* Index.12840.9-25 (indirect capital costs methodology).

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In fact, EPA withheld hundreds of pages of information from the Final ICPR as CBI.[72] The table of contents revealed the titles of the missing sections and subsections, and those titles made clear the vital nature of the withheld information.[73] In Section 5 alone, one can see that basic subject matter about cost was redacted:[74]

[72] *See* Index.12134 (un-paginated placeholder between 4-35 and 9-1, noting that Sections 5, 6, 7, and 8 "have been removed from this document").

[73] *See id.* at ii-vii.

[74] *Id.* at ii-iii.

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5.5.3.3 Earthmoving Unitized O&M Costs 5-22
5.5.3.4 Impoundment and Earthmoving Capacity Factors 5-24
5.5.3.5 Surface Impoundment Earthmoving Recurring Costs 5-24
5.6 References 5-25

According to its title, the missing Section 5 explains EPA's "General Methodology, Terminology, and Common Cost Elements." The missing subsections provided the "General Cost Methodology and Terminology" and other more specific cost methodologies, as well as the technologies evaluated.

The same is true for Sections 6 through 8. These sections laid out EPA's methodologies for analyzing costs and technologies for treating FGDW, fly ash

transport water, and BATW.[75] EPA redacted *all* of these sections and subsections. Under the pretext of CBI, EPA withheld over 250 pages in the Final ICPR.

While these sections or subsections might contain *some* CBI, the underlying methodologies themselves are necessary to understanding what EPA did and why. These missing pages are critical to determining whether EPA's promulgation of the Final Rule was reasonable. It is impossible to reproduce EPA's cost findings without the basic details on the methodology.

b. Effectiveness of BAT Technologies

In the Final Rule, EPA claimed that "biological treatment [is] well-demonstrated" technology for the treatment of FGDW.[76] But the public record hardly supports such an overarching conclusion. Nothing in the public record demonstrates that biological treatment can treat all of the industry's FGDW effectively.

EPA focused on a combination of two treatment systems for FGDW: chemical precipitation treatment (for mercury and arsenic) followed by biological treatment (for selenium and nitrate/nitrite).[77] These treatment systems are complex, multi-component technologies that must be designed and sized to treat a

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[75] *Id.* at iii-vii (Section 6, 7, and 8 entitled "FGD Wastewater Cost Methodology," "Fly Ash Transport Water Cost Methodology," and "Bottom Ash Transport Water Cost Methodology," respectively).

[76] 80 Fed. Reg. at 67,850.

[77] Proposed Rule, 78 Fed. Reg. at 34,458 (Table VIII-1).

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specific mix of pollutants, in terms of pollutant type, load, and distribution.[78] The use of biological treatment for FGDW treatment – and particularly for removal of selenium – is a relatively new innovation. The complexity and variability of FGDW make it difficult to treat using biological processes, which depend on stable conditions to maintain the microorganisms on which treatment depends. For instance, changes in temperature or in wastewater constituents, such as percentage of solids or an increase in chlorides, can cause system upsets.[79]

As explained in detail in the ELG Litigation, EPA's reliance on CBI prevented any demonstration that biological treatment is effective when a plant's FGDW contains high amounts of chloride.[80] Furthermore, EPA withheld correspondence with vendors that may undermine claims regarding the general efficacy of biological treatment. In one striking document, EPA redacted nearly everything of value as CBI regarding these issues.[81] The document suggested there are difficulties or, at the very least, important variables affecting the system's capabilities:[82]

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[78] Index.2920.7-4–7-13 (EPA's description of chemical precipitation and biological treatment technologies).

[79] *See, e.g.,* Index.9123.21-23.

[80] *See* Original Brief of Industry Petitioners at 38-39.

[81] Index.11999.

[82] *Id.* at 1-2 (all redactions in original).

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- "GE reports [Redacted]. While GE has [Redacted]. GE is [Redacted] to control oxidants and ORP."
- "GE reports that thus far, any issues related to high oxidants or [Redacted]. GE believes these issues with [Redacted]."
- "The ABMet™ system can process wastewater with [Redacted] nitrate concentrations. [Redacted] with a membrane bioreactor (MBR) or stirred tank system with MBR to [Redacted] prior to treatment with the ABMet™ system. Alternatively, the ABMet™ system can be designed to [Redacted]."
- "EPA inquired about any existing biological treatment systems having operational issues. GE reported [Redacted]."
- "GE indicated [Redacted]."
- "EPA inquired about the mechanism used to remove selenium from the backwash stream. GE noted that [Redacted]."

Given these extreme redactions, EPA's analysis was not transparent, and its conclusions are not reproducible.

D. EPA has Not Documented Any "Especially Rigorous Robustness Checks" on Information Supplied by Third-Party Vendors With a Financial Stake in the Rule

As a general matter, EPA's duty to perform "robustness checks" is heightened when it relies on the expertise of third parties with a financial stake in the Agency's action. According to both the OMB Data Quality Guidelines and the EPA Data Quality Guidelines, a fundamental criterion for the "quality" of information is whether the information is "unbiased."[83] If EPA chooses to rely on

[83] OMB Data Quality Guidelines at 8459; EPA Data Quality Guidelines at 15.

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self-interested outside vendors, the record must establish that the Agency critically analyzed the vendors' information due to the risk of bias. "An agency may not … reflexively rubber stamp information prepared by others."[84]

Here, EPA solicited information about the cost and performance of treatment technologies from the very vendors that would benefit financially from EPA's designation of their technologies as BAT. Because EPA's verification of vendor-supplied information is not available anywhere in the record, EPA did not satisfy its obligation to establish *reasonable* reliance on that information.

E. EPA's Lack of Transparency Is Evident in Its Responses to Public Comments That Cite Information Withheld from the Public Record

It is axiomatic that responses to public comments should advance the regulatory goals of transparency and reproducibility. Yet, for the ELG Rule, EPA's responses to comments demonstrate its failure to meet these goals. In its responses to comments, EPA referenced documents withheld, in whole or part, nearly 300 times under the pretext of CBI.[85] At least 53 of those references were to sections removed from the Final ICPR, which contains EPA's analysis of costs associated with the various technologies EPA considered and ultimately selected as BAT – 5 times to Section 5 (General Methodology, Terminology, and Common

[84] *Coliseum Square Ass'n, Inc. v. Jackson*, 465 F.3d 215, 236 (5th Cir. 2006), *cert. denied*, 552 U.S. 810 (2007) (internal quotation omitted).

[85] EPA cited documents entirely withheld 165 times and partially withheld 112 times.

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Cost Elements), 30 times to Section 6 (FGD Wastewater Cost Methodology), 4 times to Section 7 (Fly Ash Transport Water Cost Methodology), and 14 times to Section 8 (Bottom Ash Transport Water Cost Methodology). Many of the "responses" corresponded to a public comment about an issue EPA is statutorily required to consider.[86] Thus, they were of central significance to the Final Rule.

Without the underlying documents referenced by EPA in its responses, the "responses" are reduced to summary conclusions. The responses cannot be reproduced or fully reviewed and, therefore, are inadequate. Referring commenters to unavailable CBI is effectively no response at all.

Beyond the policies of the Executive Orders, EPA has a legal duty to respond to public comments.[87] EPA has failed to satisfy either the regulatory policies expressed in the Executive Orders or the bare legal minimum required by the APA. Therefore, the Rule should be re-opened.

II. EPA Did Not Demonstrate That Biological Treatment is Technologically "Available"

A fundamental premise of "good science" and the regulatory reform agenda is that agencies must base regulations on adequate data. Although EPA sampled FGDW at several plants during development of the Rule, the resulting data do not

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[86] For several pertinent examples pertaining to the statutory factors of cost, technical achievability, and facility age, *see* Original Brief of Industry Petitioners at 46-51.

[87] *PPG Indus., Inc. v. Costle*, 630 F.2d 462, 466 (6th Cir. 1980). *See* 5 U.S.C. § 553(c) (2015); *Nat'l Wildlife Fed'n v. Costle*, 629 F.2d 118, 134-35 (D.C. Cir. 1980).

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capture the full range of FGDW variability across the broader industry as well as within a single facility throughout the year. As industry members emphasized in their comments on the proposed rule, FGDW quality is dependent on numerous factors. Those factors include coal quality, cycles of concentration in the FGD scrubber that impact chloride and other dissolved solids concentrations, residence time within the scrubber, and chloride and magnesium levels in the various reagents (*e.g.*, limestone) used in the scrubber to remove sulfur dioxide from the flue gas. In addition to the variability of FGD wastewater, industry has noted other factors that can affect the performance of biological treatment systems, specifically the FGDW chemistry, including the oxidation-reduction potential, nitrate concentration, and the various forms of selenium, some of which may be less efficiently captured in biological treatment. Other factors include cycling on and off of coal units, which can interfere with a continuous, steady FGD wastewater feed to the system, and temperature swings, which can inhibit the biological reaction rate. All of these factors can contribute to FGD wastewater variability whether the fuel is bituminous, subbituminous or lignite coal, or a blend of coals.

As just one example of this variability, the following sections focus on the differences between FGDW from bituminous and subbituminous plants and how those differences impact system performance. While EPA collected wastewater samples at a subbituminous plant, the plant did not have a biological treatment

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system. In fact, *not one* of the subbituminous- or lignite-burning coal plants in EPA's database had biological treatment as part of its FGDW system.[88] Nor were any pilot test data for biological treatment available in the record for such facilities. Therefore, when promulgating the Rule, *the Agency did not demonstrate – and could not demonstrate – the feasibility of biological treatment for 16-25% of all plants (i.e., those burning subbituminous or lignite coal) subject to the new FGD limits.*[89] This was arbitrary, relied on an analysis that is not reproducible, and should be reconsidered.

Additionally, a new pilot study investigating biological treatment at a subbituminous-burning plant appears likely to demonstrate that the plant *cannot meet the FGDW limits using the technology EPA established as BAT.* UWAG is confident that these new data will confirm what industry has been saying all along: FGDW from plants burning subbituminous coal is different from that of plants burning bituminous coal, and the limits the Rule established for FGDW are

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[88] The Rule's analytical database includes some data from Hatfield's Ferry, a plant that at the time burned a blend of PRB and Eastern bituminous coal. However, that plant did not have a biological treatment system for its FGD wastewater. *See* Index.1653.1.3-5. It also includes data from We Energies' Pleasant Prairie Plant which burns PRB coal but which also did not have biological treatment. *See* Index.9778.206.

[89] EPA based its estimates of plants burning subbituminous and lignite coals on EPA survey data. The survey collected information through 2009. But at the final rule stage, EPA asserted that, after accounting for "announced retirements," there were no lignite-burning plants discharging FGD wastewater. Index.10078.3-525. However, industry comments demonstrate that several lignite-burning plants are authorized to discharge FGD wastewater. *See* Index.9753.5.

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therefore not appropriate. The limits also are not appropriate because plants burning bituminous coal can experience extreme FGDW variability due to a range of factors. EPA should grant this Petition and reconsider these limits based on appropriate and sufficient data that are broad enough to encompass the full range of coal-fired operations.

A. Differences Among Coal Types Have Significant Implications for the Performance and Cost of Biological Treatment

According to EPA, out of 100 plants identified as discharging FGDW in 2009, 15 to 20 plants burn subbituminous coal and 1 to 5 burn lignite.[90] This is important because coals vary greatly not only in their price,[91] availability, and heating value, but also in the air emissions they produce when burned,[92] the applicability and performance of air emissions control technologies,[93] and the characteristics of wastewater resulting from use of those air emissions control

[90] Index.12840.6-5(Table 6-2). EPA also identified 10-15 plants that burn two or more coal types. *Id.* Whether those plants can meet the limits is also in question.

[91] *See, e.g.,* Index.12372.215 (listing coal prices by types – bituminous, subbituminous, lignite, and anthracite – for selected years from 1949-2011).

[92] Different coals contain differing amounts and combinations of pollutants, including sulfur, hydrogen chloride, and mercury, which are important factors for designing and operating air emission technologies and managing the resulting wastewaters. *See* Index.12377.9-12.

[93] EPA has acknowledged differences between electric generating units based on coal types in other rulemakings. In the Mercury and Air Toxics Rule, EPA set different hazardous air pollutant emission standards based on coal ranks. 79 Fed. Reg. 24,073, 24,088 (Apr. 24, 2013).

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technologies.[94] None of these facts is disputable. They apply with equal force to plants burning bituminous coal.

Nor can there be any dispute that steam electric units are typically designed to handle a certain coal type or types. A unit designed to burn a subbituminous coal such as PRB coal cannot simply switch to burning bituminous coal. Before any fuel switch, the facility operator would need to consider air pollution controls and permit limitations and operational changes necessary to accommodate the switch. The same is true for lignite plants. Therefore, fuel switching is not the remedy to issues arising from burning a certain variety of coal.

B. The Rule Arbitrarily Ignored the Differences Between FGD Wastewater from Subbituminous Coal and FGD Wastewater from Bituminous Coal

The Rule was based on several mistaken assumptions. Among them, EPA wrongly assumed that subbituminous-burning plants can achieve FGD limits derived using data for plants burning bituminous coals (and limited data at that) because biological treatment systems provide "a mechanism to reduce selenium and nitrate/[nitrite]" and because the selenium and nitrate/nitrite present in FGDW, whether derived from bituminous or subbituminous coal, "is not different."[95] The record refutes this flawed conclusion. The effectiveness and cost of wastewater

[94] Index.47.4-17 (noting pollutant concentrations in FGD scrubber purge vary due to, among other factors, "air pollution control systems operated upstream of the FGD system.").

[95] Index.10080.5-450—5-451.

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treatment systems depend on the full pollutant "matrix" – that is, the specific mixture of pollutants as well as their individual characteristics – of the wastewater being treated.

The record demonstrates that FGDW from subbituminous-burning plants is substantially different from FGDW from bituminous-burning plants. The table below summarizes four-day average EPA data for FGDW exiting the chemical precipitation portions of the FGDW treatment systems at Allen and Belews Creek Stations, which burn Eastern bituminous coal, and at Pleasant Prairie Power Plant, which burns PRB coal.[96] The table compares dissolved fractions of constituents after the chemical precipitation system at all three facilities.[97]

For nitrates, the dissolved fraction of Pleasant Prairie's chemical precipitation effluent is more than *8 times* the values for both Allen and Belews Creek. For selenium, Pleasant Prairie's effluent is about *23 times* that of Allen and almost *twice* the Belews Creek value.[98]

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[96] At Belews Creek and Allen, this is a midpoint sample in the wastewater treatment system (chemical precipitation effluent), prior to biological treatment. But at Pleasant Prairie, the sampling point representing chemical precipitation effluent is the end of the FGDW treatment system since it has no biological treatment. Allen and Belews Creek use both chemical precipitation and biological treatment to treat their FGDW (Index.1992.2-2; Index.1954.2-3), while Pleasant Prairie uses a chemical precipitation system (Index.1966.2-3).

[97] *See* Index.1992.4-7–4-10(Table 4-2); Index.1954.4-16–4-18(Tables 4-4,4-5); Index.1966.4-12–4-14(Tables 4-3,4-4).

[98] The record contains additional documentation of the substantial differences in FGD wastewater influent between bituminous and subbituminous plants. *See, e.g.,* EPRI, *Pilot-Scale and Full-Scale Evaluation of Treatment Technologies for the Removal of Mercury and Selenium*

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Comparison of 4-Day Average FGDW Treatment After Chemical Precipitation at Allen, Belews Creek, and Pleasant Prairie[99]

Analyte	Unit	4-Day Average Dissolved Effluent, Allen (E. Bituminous)	4-Day Average Dissolved Effluent, Belews Creek (E. Bituminous)	4-Day Average Dissolved Effluent, Pleasant Prairie (PRB)
Aluminum	(ug/l)	NQ[100]	ND	NQ
Arsenic*	(ug/l)	NQ	NQ	4.85
Boron	(ug/l)	58,600	150,000	9,930
Calcium	(ug/l)	1,750,000	3,490,000	639,000
Chloride	(mg/l)	3,300	7,780	1,950
Magnesium	(ug/l)	396,000	738,000	3,560,000
Manganese	(ug/l)	393	NQ	10,800
Mercury	(ng/l)	342	46,200	22.3
Nitrate/Nitrite	(mg/l)	13.3	19.8	160
Selenium	(ug/l)	91.1	1,210	2,080
Sodium	(ug/l)	31,300	48,900	518,000
Sulfate	(mg/l)	1,400	1,380	15,500
TDS	(mg/l)	7,560	20,100	22,400

*The pollutants highlighted are those for which EPA set new BAT limits.

In addition to the pollutants EPA chose to regulate, the values for many pollutants that EPA chose *not* to regulate – but which may affect the efficiency or

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in Flue Gas Desulphurization Water, Index.12102.3-4,3-5,3-8,3-23 (showing much higher selenium and nitrate levels for the subbituminous plant).

[99] Index.1992.4-7–4-10; Index.1954.4-16–4-18; Index.1966.4-12–4-14.

[100] "NQ" means the analyte was measured above the detection limit but below the quantitation limit for all four sampling days. "ND" means the analyte was below the detection limit and could not be quantified.

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proper operation of the treatment system – are also quite different. For instance, the 4-day average sulfate level in the Pleasant Prairie influent is more than 11 times that of Allen or Belews Creek. Sulfate levels can affect the operation of the system by causing calcium sulfate scaling, in which mineral deposits build up inside the treatment system's piping and equipment.[101] At Pleasant Prairie, even with lime addition as a pretreatment step, the remaining high sulfate levels necessitate weekly cleaning of the secondary clarifier.[102] Without this regular cleaning, "excessive scale would build up and affect the performance of the clarifier."[103] This scaling issue is likely to impact both the denitrification system[104] EPA added to the model technology treatment chain and the biological treatment system meant to target nitrate/nitrite and selenium removal.

The presence of high TDS also can complicate treatment of FGDW. Within the biological treatment system, high TDS may interfere with attachment sites for bacteria, lessening the effectiveness of treatment.[105] As indicated in the table

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[101] Index.12102.4-3.

[102] Index.11876 (response to Question 19).

[103] *Id.*

[104] EPA has not demonstrated the use of a denitrification system as part of FGD wastewater treatment at any plant burning subbituminous coal, even though it accounted for denitrification costs at Pleasant Prairie and Hatfield's Ferry (which burns a blend of subbituminous and bituminous coals). Index.12264.Worksheet-List_of_Plants. Nonetheless, EPA simply assumes the additional technology will not be subject to operational issues such as scaling.

[105] EPRI, Index.12102.4-4.

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above, EPA's 4-day average for Pleasant Prairie demonstrates a TDS level that is about 3 times that of Allen and also higher than Belews Creek. Data in the record show that TDS levels can be as high as 50,000 mg/l,[106] which is approximately *6 times* the Allen 4-day average and almost *2.5 times* the Belews Creek average. EPA tries to negate the TDS issue by pointing to a pilot study at Petersburg Station in which TDS "ranged as high as 27,000 mg/L."[107] But Petersburg burns bituminous coal, so its results are irrelevant for subbituminous- and lignite-burning plants. Moreover, since FGDW influent can contain TDS at levels almost double the amount documented at Petersburg,[108] the pilot study fails to demonstrate that biological treatment systems can handle high TDS levels from subbituminous fuels equally as well as TDS levels from bituminous fuels.

Notably, the table also demonstrates substantial variability between bituminous-burning plants. In particular, the selenium, mercury, and TDS values for Allen and Belews Creek are very different. A review of additional bituminous plants would likely reveal even greater variability.

Without data, it is not reasonable to *assume* – as EPA did – that biological treatment systems will work for all types of FGDW. The feasibility of biological

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[106] Index.126.2-3.

[107] Index.10080.5-365 (citation omitted).

[108] Index.126.2-3.

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treatment for subbituminous-, lignite-, and bituminious -burning plants must be demonstrated through actual data that are representative of system variability. Reconsideration will allow just that.

C. Including Old Pleasant Prairie Data Did Not Remedy the Lack of Biological Treatment Data for Subbituminous Plants

Industry members commented extensively on the viability of biological treatment systems for subbituminous-burning plants. We Energies, the owner of Pleasant Prairie, commented that "nothing in the rulemaking record demonstrates that facilities burning subbituminous coal can meet the proposed selenium and nitrate/nitrite limitations."[109] The company urged EPA to "recalculate effluent limitations for FGD wastewater using a more robust set of data that represents the variability of FGD wastewater across the industry" and to include data from at least one plant burning solely subbituminous coals.[110]

In response, EPA explained that, between the proposed and final rules, it decided to use Pleasant Prairie data:[111]

> By including Pleasant Prairie in the dataset, the effluent limitations are based on data that include plants burning bituminous coal, subbituminous coal, and blends of bituminous and subbituminous coals. The record demonstrates that the chemical precipitation plus biological treatment BAT basis is effective at removing the pollutants present in FGD wastewater regardless of the type of coal that is

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[109] Index.8923.3.

[110] *Id.*; *see also* Index.9778.116 (UWAG).

[111] Index.10084.9-368.

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> burned, and in particular those pollutants for which EPA is establishing effluent limitations. See, e.g., the pollutant removal performance for arsenic and mercury.

EPA's response was misleading. Those Pleasant Prairie data were relevant *only* to the mercury and arsenic limits, which are based on chemical precipitation. The facility did not have biological treatment. The performance of Pleasant Prairie's chemical precipitation system as to arsenic and mercury was irrelevant to the performance of the biological treatment portion of the technology. Thus, EPA was wrong that "[t]he record demonstrates that the chemical precipitation plus biological treatment BAT basis is effective at removing the pollutants present in FGD wastewater regardless of the type of coal that is burned."[112]

EPA further misled by claiming: "The data in the record also shows that the biological treatment technology is effective at removing nitrate-nitrite and the different forms of selenium present in FGD wastewater; *that is proven true for every type of coal that has been tested with the technology.*"[113] Note EPA's qualified language: biological treatment is effective for "every type of coal *that has been tested with the technology.*" That is the point. As of the final ELG Rule, subbituminous and lignite coal had not been tested with the technology, and thus

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[112] Contrary to EPA's assertion, it also has not demonstrated that plants burning a blend of bituminous and subbituminous coals can meet the selenium and nitrate/nitrite limits. The only plant burning a blend of coals during EPA's sampling was Hatfield's Ferry, which had no biological treatment system.

[113] *Id.* (emphasis added).

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the *technology is not demonstrated for those coal types.* To set limits without appropriate supporting data was arbitrary and capricious and should be reconsidered.[114]

D. EPA's Theorizing About the Efficacy of Biological Treatment Did Not Satisfy its Obligation to Base Limits on *Demonstrated* Performance

Lacking data, EPA nonetheless declared there is no "theoretical reason" why biological treatment would not be effective at plants burning subbituminous coal.[115] It based its "theoretical" judgment on two specious arguments.

First, EPA said that "[t]here is nothing unique about the form of selenium or nitrate-nitrite that is present in FGD wastewater at plants burning subbituminous (or any other type of coal) ...."[116] This statement misses the point. Although the specific types of selenium and nitrate/nitrite in FGDW may generally be the same across coal types, the differences between FGD *wastewater* from bituminous coals and that from subbituminous coals can be significant.[117] As shown by EPA's own

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[114] *See Chemical Mfrs. Ass'n v. EPA,* 885 F.2d 253, 265 (5th Cir. 1989), *cert. denied sub nom. PPG Indus. v. EPA*, 495 U.S. 910 (1990) (EPA failed to demonstrate a "reasonable basis for its conclusion" where it tried to use data from end-of-pipe biological treatment systems to justify in-plant biological treatment systems).

[115] Index.10084.9-368.

[116] *Id.*

[117] And as already noted, EPA failed to capture the variability of FGDW across the industry. Even two plants burning bituminous coal can have very different FGDW characteristics due to differences in coal constituents or differences in operational conditions, such as cycles of concentration within the scrubbers.

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data for the Allen, Belews Creek, and Pleasant Prairie plants, the wastewaters differ in material ways.

Nonetheless, EPA simply asserted that "the characteristics of wastewater from subbituminous plants (as evidenced by the data for Pleasant Prairie ...) are similar to the characteristics of wastewater from plants burning bituminous coal (i.e., … Belews Creek …)."[118] It is simply not true that all concentrations and characteristics of FGDW from subbituminous plants are similar to those for bituminous plants.[119] But even if they were "similar," comparing pollutant concentrations is not sufficient for demonstrating that biological treatment is feasible and available for subbituminous and lignite plants.[120]

Second, the Agency claimed it considered and ruled out whether other pollutants or wastewater characteristics unique to subbituminous coal would

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[118] *Id.*

[119] *See supra* at 54-58.

[120] At the proposed rule stage, EPA did not include data from Pleasant Prairie, the only subbituminous-burning plant it sampled. EPA, *Technical Development Document for the Proposed Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, EPA-821-R-13-002 (Apr. 2013), EPA-HQ-OW-2009-0819-2257 at 10-6. But for the Final Rule, EPA included mercury and arsenic data from Pleasant Prairie in the dataset used to derive the FGD limits. Analytical Database for the Steam Electric Rulemaking, EPA-HQ-OW-2009-0819-5640. As a result of including the Pleasant Prairie data, the mercury daily maximum limit rose from 242 to 788 nanograms per liter, and the mercury monthly average rose from 119 to 356 nanograms per liter. Both arsenic limits also increased. The magnitude of the mercury changes are very significant, and indicate that including data from subbituminous-burning plants is essential to deriving appropriate limits.

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potentially interfere with biological treatment.[121] With this statement, EPA waved away possible operational difficulties from scaling (as can be caused by high sulfate levels) or from high TDS (which can potentially impact biological treatment performance). Yet, these problems occur at facilities burning subbituminous coals, and EPA's justification was patently inadequate.

It is telling that, when promulgating the Rule, EPA urged all plants to perform site-specific pilot studies before installing FGDW equipment.[122] These studies are necessary, according to EPA, to assess wastewater characteristics and determine the most appropriate technologies and their design (*e.g.*, sufficient capacity and residence time) to handle the variability of the particular FGD wastewater.[123] EPA specified that the studies should be conducted "over a long enough period of time that will include variability in plant operations such as shutdowns, fuel switches (preferably for all fuel types burned at the plant), variability in electricity generating loads, periods with high [oxidation reduction potential], etc."[124] EPA recommended that a plant "identify the 'worst case' scenario and design a sufficient FGDW treatment system that can operate under

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[121] Index.10084.9-368.

[122] Index.12006.14–16.

[123] *Id.*

[124] *Id.* at 15–16.

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the worst case conditions and achieve the effluent limits."[125] Many of EPA's recommendations would significantly increase the complexity and cost of FGDW treatment.

EPA's own recommendations, and the reasoning underlying them, flatly contradict EPA's assertion that variability among FGD wastestreams among plants, and over time at a given plant, has no effect on the achievability of the limits or the cost of technology. Indeed, pilot studies are necessary *because of the unpredictable variability of FGDW.*[126] EPA was acknowledging the uniqueness of each FGDW at each given plant. This acknowledgement demonstrates that the Rule could not have taken into account all of the site-specific technologies needed to achieve the final effluent limits for FGD wastewater, including technologies needed at subbituminous-burning plants as well as at bituminous-burning plants. And, without a full consideration of site-specific design factors, EPA could not have properly derived costs for FGD compliance at all facilities.[127]

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[125] Index.12006.16.

[126] GE, a vendor of biological treatment systems, acknowledges the "*extreme variability* in effluent quality [i.e., FGD wastewater influent to the treatment system] due to the variety of coal sources, limestone sources, and scrubber operation…." J. Sonstegard, et al., ABMet: Setting the Standard for Selenium Removal, Index.250.2 (emphasis added).

[127] The same is true for derivation of costs for indirect dischargers attempting to meet the FGD limits. Several small public power facilities face daunting costs to comply with the mandated mercury, arsenic, selenium, and nitrates limits.

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In responses to comments on the Rule, EPA also retorted that commenters had not provided data to prove subbituminous- or lignite-burning plants would be unable to meet the effluent limitations.[128] This, of course, turned EPA's regulatory obligation on its head. Since no subbituminous- or lignite-burning plants had installed the biological treatment system that EPA claimed is BAT, it would have been difficult indeed to produce such data. But that is beside the point. The burden is not on industry to prove why it should *not* be regulated. The burden is on EPA to justify regulation. Here, by statute, EPA was obliged to establish that the BAT technology is technologically "available" for the whole industrial category, including bituminous-, subbituminous-, and lignite-burning plants.

EPA also contended there is no evidence of possible interferences with biological treatment stemming from FGDW derived from subbituminous coal.[129] But that is a theoretical judgment unsupported by any performance data. It asserted that a "well operated" PRB-burning plant should have no issues meeting the limits.[130] Again, that is all theory, unsupported by any credible analysis.

With as much as 25% of the coal fleet dependent upon subbituminous or lignite coals, EPA's speculation is no small matter. EPA's database does not

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[128] Index.10080.5-166, .10078.3-525.

[129] Index.10084.9-368.

[130] Index.10080.5-148. If, in the absence of data, it is sufficient merely to say that a "well operated" plant should be able to meet a limit, then EPA could justify any conceivable limit.

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reflect the true variability of FGDW. Selecting model technologies and setting limits on an incomplete database is not consistent with the regulatory reform agenda. The large range of FGDW variability affects all plants no matter their coal type.

For these reasons, EPA should reconsider the FGDW limits in the Final Rule.

E. New Data Are Likely to Demonstrate that Plants Burning Subbituminous and Bituminous Coal Cannot Comply With The Rule's Limits Through Use of EPA's Model Technology

After EPA published the Final Rule, EPRI initiated a pilot study of the Rule's model biological treatment technology at Pleasant Prairie, a plant burning 100% subbituminous PRB coal. The results of that pilot study are yet to be released, but UWAG believes they will support what industry has reiterated: (1) treating FGDW from plants burning subbituminous coal will be substantially more difficult than treating FGDW from plants burning bituminous coal; and (2) the model biological treatment technology for FGDW treatment is not demonstrated for use with FGDW from subbituminous plants. EPRI is likely to publish the final report within the next few weeks.

Also, new data collected by AEP illustrates that variability in wastewater management can also impact performance at bituminous plants such that additional technologies beyond EPA's model technology will be needed to achieve the limits.

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If these new data are indeed contrary to EPA's assumption that biological treatment systems will function equally as well no matter the type of coal being burned, then they will further demonstrate why EPA must reconsider the limits for FGD wastewater.

III. EPA Violated Principles of Data Quality and Transparency in Characterizing Bottom Ash Transport Water

The Final Rule imposed a zero discharge requirement for BATW.[131] Every plant currently discharging any BATW (aside from oil-fired units and units less than 50 megawatts) must convert its systems to prevent any BATW discharge whatsoever.[132] This single requirement exacts a very heavy price. According to EPA, *103 plants must retrofit their BATW systems as a result of the Rule, at a total industry capital cost of over $2.5 billion* and annual operations and maintenance costs of $133 million (2010$).[133] Based on anecdotal reports, UWAG is confident EPA's cost estimate is a gross underestimate. However, the public cannot evaluate

[131] 40 C.F.R. § 423.13(k)(1)(i).

[132] The Rule provides two limited exemptions for discharges of BATW. First, plants can discharge "low volume, short duration" discharges from minor leaks or minor maintenance events. 40 C.F.R. § 423.11(p). Second, plants can discharge BATW if it is reused as makeup water in the FGD scrubber and thus subject to the FGD wastewater discharge limits. 40 C.F.R. § 423.13(k)(1)(i).

[133] TDD at Table 9-10, 9-45.

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the estimate because EPA's estimates of plant-specific costs are not available for public review.[134]

EPA should have carefully selected the data used to justify this level of impact. But that was not the case. EPA's BATW data suffers from a plethora of data quality issues, all of which affect EPA's analyses. The following types of flaws infect the BATW data: (1) inconsistencies with EPA's own data acceptance criteria; (2) errors in units of measure; (3) use of unacceptable or obsolete analytical methods; and (4) application of overly conservative methodologies addressing non-detect analytical results. For example, EPA's analytical database uses the wrong units of measure for a mercury datapoint at the Kammer plant. The units should be nanograms per liter (parts per trillion) rather than micrograms per liter (parts per billion).[135] In addition, EPA used detection limits from older analytical methods to estimate pollutant concentrations even though the laboratory reported the pollutants were not detected in the samples. These unacceptable practices resulted in an overestimation of pollutant loadings for BATW. These sorts of errors justify reconsideration.

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[134] *See* EPA's Final ICPR. The portions of that document containing plant-specific costs (EPA-HQ-OW-2009-0819-6472.ATT1, ATT2) have been redacted from the record in their entirety.

[135] Analytical Database for the Steam Electric Rulemaking, EPA-HQ-OW-2009-0819-5640.

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Additionally, EPA chose to include 27 samples of *40-year-old* data from *unidentified sources* as part of its BATW dataset. Because the sources of the data are neither identified nor described with relevant detail, the public cannot determine critical facts that go to the legitimacy of the data. For instance, EPA did not address whether the plants that supplied the data are still operating, whether the ash ponds sampled are still discharging, or whether the materials contained in the particular ash ponds are the same as when sampling occurred. It is impossible for the public to determine the ash pond management practices that would apply to the data or to determine whether, since the data were gathered, practices have changed. In short, there is no way for the public to determine whether the data are representative of *current* industry discharges. This lack of transparency is contrary to the goals of regulatory reform and the Office of Management and Budget's and EPA's own rules on the validity of data.[136]

The quality of the data was also dubious. EPA failed to provide any quality control/quality assurance information for the 27 samples. Moreover, EPA did not disclose either the laboratory methods used to analyze the samples or the actual laboratory reports to substantiate the data. Instead, the 40-year old values are

[136] *See* Exec. Order 13777, 82 Fed. Reg. at 12,286 (Mar. 1, 2017) (requiring evaluation of rules relying in whole or part on "data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility").

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simply copied out of an outdated EPA report – *itself more than 30 years old* – with no proper supporting documentation.

Also, EPA used the poor quality BATW characterization data as a basis for several important purposes, including calculating a cost-effectiveness ratio. Since the underlying BATW characterization data was poor quality, the cost-effectiveness analysis is flawed. An agency has an obligation to base its analysis on acceptable data. In this case, EPA did not do so.

In the 21st century, data unsupported by routine quality control/quality assurance checks and proper documentation are not considered reliable data, and they should not be used to compel expenditures of $2.5 billion or more. Reconsideration of the BATW limits is appropriate.

The following sections explain how EPA selected BATW characterization data and why the data are critical to EPA's BATW decisions.

A. EPA Failed to Gather Current BATW Data

Despite site visits to 68 steam electric plants prior to the proposed ELG rule,[137] EPA collected only one sample of BATW.[138] EPA obtained this sample in 2007, almost 2 years before it decided to revise the steam electric ELGs. The lack of additional BATW samples during the course of the rulemaking was a curious

[137] 78 Fed. Reg. at 34,444.

[138] EPA sampled BATW at the Homer City Power Plant in August 2007. Final Detailed Study at 2-10.

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omission that did not go unnoticed. Industry urged EPA to gather more BATW samples, but EPA never did so.

B. EPA Relied on Old Data from Unidentified Sources

The 1973-1976 data EPA used as part of its BATW dataset derive from 27 samples collected at three unidentified Tennessee Valley Authority plants. EPA first presented these data ("old TDD data") in 1980 as part of the proposed Development Document for the steam electric point source category.[139] EPA then incorporated them into Appendix A of the final 1982 Development Document.[140] In a memorandum describing its 2015 review of data for ash transport water, EPA noted that the 1982 Appendix A plants are "unidentified."[141] Incredibly, EPA decided to use the data even though it did not match the data with an individual plant or discharge point, and even though it has other sources of data, such as *current* data supplied by industry.[142]

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[139] EPA, *Development Document for Effluent Limitations Guidelines and Standards for the Steam Electric Point Source Category* (Sept. 1980), EPA-HQ-OW-2009-0819-5450-Att21 at 514-27, 552-56.

[140] EPA, *Development Document for Final Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Steam Electric Point Source Category* (Nov. 1982), EPA-HQ-OW-2009-0819-2186, Appendix A at 571-84, 609-13.

[141] ERG, *Ash Transport Water Analytical Data Review Methodology Memorandum* (Sept. 30, 2015), EPA-HQ-OW-2009-0819-6349 at 15.

[142] This use of data from unidentified plants is distinct from EPA's general practice of "anonymizing" data used in ELG rulemakings to protect CBI. When EPA uses codes instead of plant names and other identifying information to protect CBI, it nonetheless has identified for itself the plants supplying the data, and therefore the Agency has the means to satisfy itself that the data are representative. In this case, EPA admits that the plants are "unidentified."

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In addition to the old TDD data, EPA's BATW analytical database uses more current industry-generated data and EPA's single 2007 sample. However, the old TDD data is a significant and influential component of the database, comprising approximately 28% of all the parameter data points used by EPA to characterize BATW for the Rule.[143]

C. Use of Data from Unidentified Sources Prevents Proper Data Evaluation

Without being able to tie the old TDD data to specific plants, one cannot properly evaluate whether the data are representative because key plant characteristics are unknown. EPA itself acknowledged several operating procedures that can affect BATW characteristics, including:

- adding chemicals to ash ponds to control pH;
- injecting carbon dioxide into the pond to reduce alkalinity;
- adding polymers to the pond to enhance settling; and
- adding acidic wastestreams to the pond, which can increase the metals concentration in the effluent.[144]

Without knowing the plants' identities, it is impossible to tell whether the plants used any of these methods during the sampling period or whether the plants now employ these methods.

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[143] EPA used a total of 2,252 data points to characterize BATW loadings. Of that amount, it derived 632 data points from the old TDD data. EPA, Analytical Database for Steam Electric Rulemaking, EPA-HQ-OW-2009-0819-5640.

[144] Final Detailed Study at 5-13, 5-15.

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In sum, there is no way for EPA or the public to know if the data are representative of current industry discharges. EPA admitted that "[t]he processes employed and pollutants discharged by the industry look very different today than they did in 1982."[145] We agree. The processes employed to manage ash ponds – and the ash ponds themselves – have changed since the 1970s, when the old TDD data were collected. The Rule must be reconsidered to use more recent, reliable data in setting BATW limits.

D. The Old TDD Data Are Not Representative Because New Regulations Took Effect in 1974 and 1982

Changing regulations dramatically changed how the industry handled BATW over the years. Old data are therefore not representative of current BATW. The old TDD data, as already noted, were collected and analyzed in 1973-1976. The first steam electric ELGs became effective on November 7, 1974.[146] That rule stayed in effect until EPA revised the steam electric ELGs in 1982.[147]

Since 16 out of the 27 "old TDD data" samples were collected prior to November 7, 1974,[148] those samples do not reflect either the 1974 ELG rule or the 1982 revisions. Under the 1974 rule, existing facilities had to recycle BATW 12.5

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[145] 80 Fed. Reg. at 67,840.

[146] 39 Fed. Reg. 36,186, 36,198 (Oct. 8, 1974).

[147] 47 Fed. Reg. 52,290 (Nov. 19, 1982).

[148] EPA lists the dates of the samples on Tables A-2, A-4, and A-13 of Appendix A of the 1982 Development Document, pp. A-5–A8, A-12–A-14, A-43.

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times before discharging and were subject to numeric total suspended solids (TSS) and oil and grease limits.[149] New sources faced stricter requirements; they had to recycle BATW 20 times before discharging.[150] The 1974 regulation also set a pH range for all discharges of 6.0-9.0.[151] Because the pH of a pond can affect metal concentrations in the discharge, requiring ash ponds to operate within a pH range likely changed the discharges from the ponds. For these reasons, the 16 samples pre-dating the 1974 rule cannot be representative of current BATW discharges because they do not reflect current discharge limits.

The remaining 11 "old TDD data" samples pre-date the 1982 revisions. In that revision, EPA deleted the existing and new facility requirements to recycle BATW. That change alone is very significant and would have affected how ponds operate. Therefore, whether the old TDD data (both the 16 samples pre-dating the 1974 rule and the 11 samples pre-dating the 1982 revisions) are representative of current industry discharges is unknown.

E. The BATW Characterization Data Were Integral to EPA's Rulemaking Processes

Despite its many flaws, EPA used the BATW analytical data for several critical rulemaking functions. First, it used the sample analytical data to define

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[149] 40 C.F.R. § 423.13(d) (1975).

[150] 40 C.F.R. § 423.15(d) (1975).

[151] 40 C.F.R. § 423.12(b)(1) (1975).

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"pollutants of concern" or POCs. For BATW, EPA defined POCs as "those pollutants that are confirmed to be present at sufficient frequency in untreated wastewater samples of that wastestream."[152] EPA identified 37 BATW POCs.[153]

Second, using the defined POCs for the particular wastestream,[154] EPA calculated plant-specific loadings for baseline discharges and then totaled them to estimate current industry-wide pollutant loadings for the wastestream.[155] After calculating the baseline discharge, EPA estimated the amount of pollutants removed by the chosen technology option.[156]

Once EPA calculated pollutant pounds removed, it also calculated "toxic weighted pounds equivalent" or TWPEs. As EPA explained:

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[152] 80 Fed. Reg. at 87,647.

[153] TDD, Table 6-16 at 6-25 to 6-26. EPA established several protocols for accepting data used to define POCs. For example, (1) samples must be representative of full-scale plant operations; (2) for BATW, the sample must comprise at least 75% by volume BATW; and (3) source water sample data that are paired with wastewater sample data must be taken within a day of the wastewater sample collection date. TDD at 6-17 to 6-18. But Petitioners cannot substantiate whether EPA followed its own protocols as to BATW POC data because documents detailing EPA's POC evaluation are redacted in their entirety from the record available for public review. *See Memorandum-Bottom Ash and Fly Ash Transport Water Pollutants of Concern (POC) Analysis Methodology* (EPA-HQ-OW-2009-0819-6049); *Analysis-Source Water Ash Treatment Analysis Final* (EPA-HQ-OW-2009-0819-6048); and *Analysis-Pollutants of Concern Ash Treatment Analysis Final* (EPA-HQ-OW-2009-0819-6050).

[154] "The industry-level baseline loadings presented in Table 10-14 include only those pollutants identified as POCs…." TDD at 10-34.

[155] EPA lowered the numbers of plants with bottom ash ponds from 115 to 84 to account for the effect of the Clean Power Plan. *Cf.* TDD Table 10-14 to Table 10-15 at 10-34–10-36. Again, Petitioners cannot substantiate either number because EPA's underlying analysis is not part of the record available for public review. And, of course, any change in the CPP Rule will affect the number of plants likely to be affected by the ELG Rule.

[156] TDD, Tables 10-16 and 10-17 at 10-37.

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> EPA uses toxic weighting factors (TWFs) to account for differences in toxicity across pollutants.... EPA calculated a toxic-weighted pound-equivalent (TWPE) value for each pollutant discharged to compare mass loadings of different pollutants based on their toxicity. To perform this comparison, EPA multiplied the mass loadings of pollutant in pounds/year by the pollutant-specific TWF to derive a "toxic-equivalent" loading (lb equivalent/yr), or TWPE.[157]

Using pounds of pollutant removed and/or TWPE calculations, EPA completed several essential elements of its rulemaking analysis:

1. It compared the pollutant removal efficacy of the technology options for BATW.

2. It used the baseline loading and estimated pollutant removals as a major input to the Environmental Assessment, a 513-page document prepared "to evaluate the environmental impact of pollutant loadings released under current (*i.e.*, baseline) discharge practices and assess the potential environmental improvement from pollutant loading removals under the final rule."[158]

3. It calculated the cost-effectiveness of the Rule as the cost per pound of TWPEs removed, for comparison to the cost-effectiveness of other effluent guidelines rulemakings.

4. It compared the total estimated costs of the Rule to the total estimated benefits (*i.e.*, benefits based on EPA's estimate of the pounds of pollutants removed from receiving waterbodies).[159]

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[157] TDD at 10-3.

[158] EPA, *Environmental Assessment for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, EPA-821-R-15-006 (Sept. 2015), EPA-HQ-OW-2009-0819-6427 at 1-1.

[159] *See* EPA, *Benefit and Cost Analysis for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, EPA-821-R-15-005 (Sept. 2015), EPA-HQ-OW-2009-0819-5856.

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Despite their serious flaws, the BATW characterization data, therefore, were critical building blocks for much of the Agency's rulemaking processes.

F. EPA's Cost-effectiveness Analysis for BATW is Flawed

EPA's cost-effectiveness analyses illustrate the importance of selecting the right BATW characterization data. The flawed dataset that EPA used for BATW characterization affected EPA's cost-effectiveness analysis by increasing the amount of pollutant loadings attributable to BATW. While EPA was quick to note that a cost-effectiveness analysis is "not required by the CWA, and not a determining factor for establishing BAT,"[160] this analysis allowed EPA to compare the effectiveness of candidate technologies while factoring in the costs of those technologies. Using this metric also allowed EPA to compare the cost-effectiveness of a portion or the Rule (or the entire Rule) to recently promulgated BAT limitations for other industries, which range from less than $1 per TWPE to $404 per TWPE.[161]

In the proposed ELG Rule, EPA estimated that a zero discharge approach to BATW would cost $107 per TWPE.[162] At the proposed rule stage, UWAG

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[160] 80 Fed. Reg. at 67,881.

[161] *Id.*

[162] EPA, *Technical Development Document for the Proposed Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, EPA-821-R-13-002 (April 2013), EPA-HQ-OW-2009-0819-2257 at 8-34; see also 78 Fed. Reg. at 34,474 col. 1.

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challenged EPA's BATW cost-effectiveness analysis on several grounds, including the use of old or otherwise invalid data.[163] When UWAG calculated its own cost-effectiveness ratio for BATW, using better quality characterization data and more realistic capital costs, it ranged from $1,635 to $16,492 per TWPE.[164] Therefore, UWAG's estimate for the ELG Rule was *4 to 41 times greater than $404 per TWPE,* the highest historical BAT cost-effectiveness ratio that EPA had ever used.

In the Final Rule, EPA adjusted the characterization data it used for BATW to eliminate some of the data that UWAG pointed to as old and invalid. But it substituted in other old 1970s-1980s data from unidentified plants, as well as newer data that in some cases were misinterpreted. Based on the new dataset, EPA calculated a new cost-effectiveness ratio for BATW of $314-457 per TWPE, or about 3 to 4 times its original estimate.[165] Nonetheless, EPA found that the cost-effectiveness of the total final rule was in the range of $136-149 per TWPE.[166]

Even after EPA's adjustments for the final rule, the BATW characterization dataset is of unacceptable quality, for the many reasons previously noted, which resulted in a significant overestimation of pollutant loadings attributed to BATW. Having undertaken to consider cost-effectiveness – and having used it as a primary

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[163] UWAG Sept. 2013 Comments at 79.

[164] *Id.*

[165] 80 Fed. Reg. at 67,882.

[166] *Id.*

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tool across multiple effluent guidelines rules – EPA had an obligation to use acceptable data in its analysis. It failed to do so.

Whether or not the CWA requires EPA to perform a cost-effectiveness analysis of BAT determinations, it is good administrative practice to do so. Since EPA's cost-effectiveness analysis depends on the quality of the underlying pollutant loading data and those data are derived from BATW characterization data, if the characterization data are flawed, then the whole cost effectiveness analysis is flawed and should be reconsidered.

The lack of transparency is reason alone to reevaluate an EPA decision that the Agency admits will cost *at least $2.5 billion.* When coupled with the serious concerns about the representativeness and accuracy of the data, it is clear that reconsideration is appropriate and that an administrative stay during reconsideration is likewise appropriate.

IV. New Data Also Demonstrate that the Rule's IGCC Limits are Technologically Infeasible

Sufficiency of data is another core requirement for sound regulation.[167] For IGCC plants, EPA badly missed the mark. The IGCC limits in the Rule were based on an insufficient and unrepresentative dataset. Newly available data prove

[167] "Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation." Executive Order 12866, *Regulatory Planning and Review* (Sept. 30, 1993), 58 Fed. Reg. 51,735, 51,736 (Oct. 4, 1993).

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that industry's concerns about the limits were justified. The new data show that the limits for IGCC wastewater cannot reliably be met. Indeed, a brand new, state-of-the-art IGCC facility cannot meet the limits, *even though it employs what EPA deemed to be "model" technology.*

The record is clear that EPA relied on incomplete and inappropriate data in setting the IGCC limits. The new facility – Duke Energy Indiana's Edwardsport[168] – uses a two-stage gasification wastewater treatment system. Two-stage treatment produces far less wastewater, but that residual wastewater (known as "crystallizer effluent") has higher pollutant concentrations than does the wastewater from one-stage treatment (known as "vapor compression effluent"). Duke commenced construction of Edwardsport in 2008, and commercial operations began in June 2013, the same month in which EPA published the proposed ELG Rule.

To develop the gasification wastewater limits, EPA gathered gasification wastewater characterization data from two other IGCC facilities that had been in operation for many years: Wabash River (which used one-stage treatment and which has since closed) and Polk (which uses two-stage treatment). Despite

[168] Edwardsport qualifies under the Rule as an "existing facility," not a "new" facility, because it commenced construction long before the ELG Rule was proposed, much less finalized.

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having limited data from only two facilities,[169] EPA discarded Polk's crystallizer effluent data because the Agency believed Polk's crystallizer was malfunctioning at the time of sampling.[170] With that decision, EPA rejected its only crystallizer effluent data (*i.e.*, data most likely to be similar to the crystallizer effluent that the state-of-the-art Edwardsport plant would generate). Notwithstanding the data shortcomings, EPA did not seek to obtain replacement data from Polk. Despite comments from industry expressing concern about the lack of sufficient IGCC-specific data in the record[171] and the numerous technical differences between the limited number of IGCC facilities in operation,[172] EPA used only vapor compression effluent data from Polk (representing one-stage treatment) to set the final limits for arsenic and mercury.[173]

Data from Edwardsport demonstrate that a state-of-the-art plant with two-stage treatment cannot meet the limits. EPA set gasification wastewater limits for arsenic, mercury, selenium, and TDS. The summary table below compares

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[169] The dataset collected by EPA included only four daily effluent samples from each facility. In Polk's case, there were four daily samples of effluent from the intermediate vapor compression step and four samples of final effluent from the crystallizer.

[170] Index.2920.13-20; Index.12840.13-26-13-27.

[171] Index.8684. 78-81 (Duke Energy) (discussing inadequacies of data set for setting reliably achievable gasification wastewater limits), Index 9778.289-91 (UWAG) (discussing inadequacies of gasification wastewater data set).

[172] Index.8684.77-78; Index.9778.287-89.

[173] The effluent data from Wabash River were also used by EPA in setting ELG limits for selenium and TDS. However, it is the ELG limit for mercury that poses Edwardsport's greatest compliance challenge.

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Edwardsport arsenic, mercury, and TDS data from May 2013- October 2015 to the ELG limits.[174]

Parameter	Edwardsport Daily Maximum	ELG Daily Maximum	Edwardsport 30-day Average	ELG 30-day Average
Arsenic, total ug/L)	15	4	--	--
Mercury, total (ng/L)	12.8	1.8	9.1[a]	1.3
Total dissolved solids (TDS) (mg/L)	222	38	67.2[b]	22

a=September 2015 average (highest 30-day average)
b=October 2015 average (highest 30-day average)

Since 2015, Edwardsport gasification wastewater effluent continues to exceed the arsenic, mercury, and TDS limits. According to its renewed wastewater discharge permit, the new ELG limits will be applicable to Edwardsport in April 2021.

Because the existing $120 million gasification wastewater treatment system cannot consistently meet the limits, Edwardsport was forced to file a request for a fundamentally different factor variance[175] and is awaiting a response from EPA Region V. Variances from ELG limits are very rarely granted – none thus far have been granted under the Rule. If Edwardsport is denied a variance, its options will

[174] The Edwardsport data are based on 27 samples, as documented in Appendix 1 to Duke Energy Indiana, LLC's Application for a Fundamentally Different Factor Variance, Edwardsport IGCC Station, NPDES Permit IN0002780, submitted to EPA Region V and Indiana Dept. of Environmental Management (April 27, 2016) ("Duke FDFV Application"), attached as Exhibit 3 to this Petition.

[175] Duke FDFV Application.

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be to (1) identify, design, and install one-of-a-kind wastewater treatment technologies in the hope of achieving consistent compliance; or (2) stop operating. By statute, BAT must be based on "available" technologies. Companies should not be forced *after* an ELG is issued to explore new and untested technologies in the hope of meeting the limits.

This is how a rule based on woefully insufficient data penalizes industry and imposes excessive costs on society. Duke – despite its substantial efforts to design, construct, and operate a costly state-of-the-art IGCC facility – has been forced into an uncertain position as a result of the Rule's unreasonable and unsubstantiated limits. Well-developed rules are supported by appropriate data and do not cause lingering uncertainties; they allow businesses to make efficient, cost-effective decisions. The limits for IGCC facilities are an example of the worst type of regulatory outcome: requirements that (1) are technologically infeasible and (2) increase costs and exacerbate business stagnation due to uncertainty.

V. Cumulatively, the ELG Rule and Other Rules Are Having Devastating Economic Impacts

It is undeniable that the convergence of the ELG Rule and other rules affecting coal-fired power plants is causing adverse economic impacts. The other rules include the CCR rule, the CPP rule, and the CWIS rule. First, the cumulative compliance costs are massive. As a result, the rules will cause and contribute to

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plant closures and job losses. Second, the lack of coordination among the rules (and in particular the compliance deadlines they set) magnifies business uncertainty and expense. Third, the CPP and the CCR rule have seen their status change since promulgation of the ELG Rule. Both are in litigation and subject to further changes, thus exacerbating uncertainty about the costs and plant closures attributable specifically to the ELG Rule and whether and how the rules can be harmonized.

The cumulative impact of all these rules makes the ELG Rule a prime candidate for reconsideration to promote regulatory reform policies.

A. For Coal-Fired Units, the Cumulative Compliance Costs and Job Losses From EPA Rules Are Staggering

EPA's own estimates[176] of the costs of the ELG, CCR, CPP, and CWIS rules demonstrate the adverse economics the coal-fired fleet is facing. EPA claims the *annualized* total social costs of the ELG and CWIS rules will be $471.2-479.5 million (2013$) and $274.9 million (2011$), respectively.[177] The Agency estimates the total *annualized* incremental costs of the CCR rule will be $509-735 million (2013$) (over 100 years).[178] The CPP alone is projected to cost billions per year. EPA predicts annual illustrative compliance costs of $1.4-2.5 billion (2020),

[176] Again, industry does not accept EPA's estimates. In fact, industry believes EPA grossly underestimated the costs of many of these rules.

[177] 80 Fed. Reg. at 67,865 (ELG Rule); 79 Fed. Reg. at 48,415 (CWIS Rule).

[178] 80 Fed. Reg. at 21,309.

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$1.0-3.0 billion (2025), and $5.1-8.4 billion (2050) (all in 2011$).[179] Cumulatively, these rules are projected annually to cost the coal-fired industry (and their customers) billions of dollars for many years.

While the CPP and the CCR rules are being substantially changed, UWAG members are incurring the heavy costs of complying or planning to comply with the ELG rule. Dynegy Inc. recently estimated its costs of compliance to total approximately $308 million, with $41 million to be spent in less than one year and $178 million to be spent within 3 years.[180] Dynegy's costs are not unique. NRG, another UWAG member, anticipates that its total ELG costs will be approximately $200 million.[181] AEP has included in its total projected environmental investments for 2018 through 2025 ELG Rule compliance costs ranging from $400-$550 million through 2023.[182]

Smaller, local utilities are likewise experiencing high compliance costs relative to their lower numbers of ratepayers. For instance, City Utilities of Springfield, Missouri is a community-owned utility. It is a component of the City of Springfield and is overseen by a board of local citizens. It operates electric

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[179] 80 Fed. Reg. at 64,680-81.

[180] Dynegy Inc., Form 10-K, filed with the U.S. Securities and Exchange Commission for the fiscal year ended December 31, 2016 (Feb. 27, 2017) at 18.

[181] NRG, Form 10-K, filed with the U.S. Securities and Exchange Commission for the fiscal year ended December 31, 2016 (Feb. 28, 2017) at 32.

[182] AEP, Inc. Form 10K, filed with the U.S. Securities and Exchange Commission for the fiscal year ended December 31, 2016 (Feb. 28, 2017) at 14.

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generating capacity of 1,120 MW, providing electricity to approximately 112,000 customers over a 320-square mile area. To comply with the ELG Rule, City Utilities has already spent $4 million in capital costs and will need to spend an additional $3 million in capital costs if the "zero discharge" BATW requirement stands, exclusive of additional annual operating costs. This is in addition to the significant costs to comply with the CCR Rule at an estimated total cost of $14 million.

Since the ELG Rule phases in compliance from November 1, 2018, through December 31, 2023,[183] prompt reconsideration of the Rule offers a potential of relief from some of these costs.[184]

Unit and facility closures based on the cumulative impact of these rules are inevitable. In 2015, when EPA promulgated another rule affecting coal-fired power plants (the Mercury and Air Toxics Standards rule), utilities were forced to retire almost 14 gigawatts of coal-fired generation.[185] That represented more than

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[183] 80 Fed. Reg. at 67,854.

[184] Some public power utilities are experiencing especially acute impacts from the Rule's deadlines because they are indirect dischargers. Instead of phased-in compliance deadlines, they face a fixed deadline of November 1, 2018, as indirect dischargers subject to Pretreatment Standards for New Sources ("PSNS") and Pretreatment Standards for Existing Sources ("PSES"). Thus, those dischargers are making significant capital investment decisions without knowing the ultimate fate of the CPP or CCR rules (or, indeed, the ELG Rule itself if this petition is granted). Reconsideration, coupled with a suspension of the deadline, is imperative for them.

[185] U.S. Energy Information Admin., *Coal made up more than 80% of retired electricity generating capacity in 2015,* (available at www.eia.gov.todayinenergy/detail.php?id=25272).

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80% of all 2015 retirements.[186] Similar impacts from the current batch of rules are likely. EPA itself estimated that, due to the CPP rule alone, 47 plants and another 19 units that otherwise would be subject to the ELG Rule would close or be repowered.[187]

Job losses are a natural consequence of unit and facility closures. Even for those power plants repowered with natural gas, there will be job losses, because a coal-fired unit employs more personnel than a comparably sized natural-gas fired unit.[188] For the CPP alone, the Energy Information Administration (EIA) estimated severe job losses. By 2030, EIA forecasts that, if the CPP is implemented, there would be about *376,000 fewer non-farm jobs than if there were no CPP.*[189] The U.S. Chamber of Commerce, among many others, asked the Supreme Court to stay the CPP because of economic concerns, including localized issues in rural or economically distressed areas of the country. Its stay application included many declarations from potentially affected communities. For example, a

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[186] *Id.*

[187] TDD, Table 4-18 at 4-45.

[188] Buchsbaum, L., *Supporting Coal Power Plant Workers Through Plant Closures,* Power Magazine, June 1, 2016 (available at www.powermag.com/supporting-coal-power-plant-workers-plant-closures) (quoting AEP spokesperson that a "good-size" natural gas plant requires about 25 workers, as compared to 100-200 for a "good-size" coal-fired plant) (last visited March 18, 2017).

[189] Institute for 21st Century Energy, U.S. Chamber of Commerce, *EPA Clean Power Plan: EIA's Forecast Shows Benefits Fall Well Short of Costs ... Again* (June 2016) at 10, *citing* EIA, Annual Energy Outlook 2016.

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school superintendent from Oliver County, North Dakota, described the likely impact to his District upon closure of one of two units at a nearby coal-fired station and the resulting 40% reduction in employment at a local coal mine. About 25% of the student population of the District are students whose families are dependent on the energy sector for their jobs, and the loss of those students would devastate the District:

> [T]he closure of the Coal Creek and Minnkota units and reduced production at the Falkirk Mine would result in significant financial harm to the District. One of the most important sources of income for the District is local property taxes. As families move away in response to the closures and reduced production at the mine, the size of the tax base will shrink, thus cutting funding for the District. Our local taxable evaluation will decrease with flooding of houses on the market and the lack of prospective home buyers .... This loss of funding would force the District to lay off staff, cut vital programs, or both.[190]

The business manager for a local chapter of the International Brotherhood of Boilermakers also submitted a declaration in support of the U.S. Chamber of Commerce's application for stay. He predicted that one station's closure would cost the local's members over $8,000,000 in wages and benefits in 2016 and the

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[190] Declaration of Curtis Pierce, District Superintendent, Center-Stanton Public School District, Exhibit 7-H to U.S. Chamber of Commerce's Application for Immediate Stay of Final Agency Action Pending Appellate Review, para. 10 at 4, *West Virginia v. EPA*, No. 15-A-787 (Sup. Ct. Jan. 27, 2016).

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closure of one of two units at another facility would mean the loss of $13-14,000,000 in wages and benefits.[191]

The ELG Rule's costs contribute to the threat of job losses, particularly when it is added on top of the impacts of other rules. The right course, therefore, is to reconsider the ELG Rule and its impacts on the economy as a whole and on local communities.

B. Lack of Coordination Among the Rules Causes Economic Inefficiencies and Uncertainties

EPA purported to analyze the impact of the final CCR rule and the proposed CPP rule on the ELG Rule. EPA agreed that the CPP was a major new rule affecting the same plants targeted by the ELG Rule; that is why EPA conducted its analysis. But it did not release its CPP analysis for public comment, and thus the industry had no way of evaluating it during the ELG rulemaking.

Had EPA's analysis of the CPP been released for comment, the industry would have demonstrated to EPA that the Final Rule's deadlines should be synchronized with the CPP's, to avoid unnecessary waste of resources and compliance costs. As issued, the Rule specifies that the new limits become

[191] Declaration of Luke Voigt, Business Manager, International Brotherhood of Boilermakers Local 647, Exhibit 7-C to U.S. Chamber of Commerce's Application for Immediate Stay of Final Agency Action Pending Appellate Review, paras. 8 and 10 at 4, 5, *West Virginia v. EPA*, No. 15-A-787 (Sup. Ct. Jan. 27, 2016).

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applicable "as soon as possible."[192] Although permitting authorities have discretion to consider the CPP in deciding what constitutes "as soon as possible" for a given facility,[193] industry is experiencing wide variations in applicability dates. In any event, the ELG Rule requires application of the new limits "no later than" December 31, 2023. Consequently, the Rule's deadlines are inconsistent with the CPP's requirements to achieve greenhouse gas performance rates between 2022 and 2030.[194]

Competing deadlines will necessarily have an impact on EPA's analysis of the respective costs of the rules. More importantly, competing deadlines increase uncertainty for the industry members attempting to comply. And these uncertainties and complications increase costs, as industry struggles to harmonize its decisions on all of the pending rules at once.

A similar lack of harmony exists between the CCR rule and the ELG Rule. As a part of the CCR rule litigation,[195] EPA sought and was granted voluntary remand of portions of the rule.[196] Two of the remanded provisions have significant

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[192] *See, e.g.*, 80 Fed. Reg. at 67,894-95 (to be codified at 40 C.F.R. § 423.13(g)(1)(i)) (requiring compliance with the new FGD wastewater limits "as soon as possible beginning November 1, 2018, but no later than December 31, 2023").

[193] *See id.* at 67,894 (to be codified at 40 C.F.R. § 423.11(t)(2)(ii)).

[194] 80 Fed. Reg. at 64,664.

[195] *Utility Solid Waste Activities Group ("USWAG") v. EPA,* No. 15-1219 (D.C. Cir. filed July 15, 2015).

[196] Order, *USWAG v. EPA* (June 14, 2016), ECF No. 1619358.

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consequences for discharges from ponds governed by the ELG Rule. Under those provisions (40 C.F.R. § 257.103(a) and 40 C.F.R. § 257.103(b)), a facility required to cease sending CCRs to a pond has to begin closing the pond within 30 days after ceasing its use for CCR waste.[197] But many industry ponds are used for both CCR and non-CCR wastewater. Therefore, EPA remanded these provisions so that it could consider whether to extend the CCR rule's alternative closure provisions to ponds that cease receiving CCR wastes but continue receiving non-CCR wastewater.[198]

EPA's decision on this point is critical to management of many existing ponds. If those ponds need to cease receiving both CCR and non-CCR wastewaters, many industry facilities will have to develop whole new wastewater management systems, and in many cases that involves rethinking the entire water balance and wastewater characteristics for each wastestream. If a pond may have to cease receiving non-CCR wastewater as a result of the CCR rule, then it makes no sense to retrofit treatment systems for purposes of the ELG Rule without considering that impact. It is inefficient in the extreme to undertake enormous system retrofits for purposes of the ELG Rule, and then have to rethink those retrofits – at considerable expense and system down-time – when EPA acts on the

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[197] *See* 40 C.F.R. § 257.102(e).

[198] Respondent EPA's Unopposed Motion For Voluntary Remand of Specific Regulatory Provisions, Section II.E at 8-9, *USWAG v. EPA* (Apr. 18, 2016), ECF No. 1609250.

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remanded CCR provisions. Through reconsideration of the ELG Rule and an administrative stay, these inefficiencies caused by the mandates of multiple rules can be addressed.

C. The Changed Status of the CPP and the CCR Rule Warrants Reconsideration of EPA's Cost Analysis

Even if EPA's analyses of the CPP and CCR impacts on the ELG Rule were accurate when the ELG Rule was finalized (and they were not), they cannot be accurate now. For the ELG Rule, EPA developed two separate economic analyses: one including the CCR rule, and one including both the CCR rule and the CPP. Given recent developments, analyzing the ELG Rule's impacts to industry and society through the lens of the CPP and CCR rules as finalized is inappropriate.

In February 2016, the Supreme Court stayed the CPP rule pending the outcome of judicial challenges.[199] Moreover, the President appears poised to issue an executive order requiring EPA to reconsider and potentially repeal the CPP.[200] These new circumstances provide strong reason to reconsider EPA's cost analysis for the ELG Rule. That analysis assumed unit closures or retrofits to gas caused by the CPP according to the CPP's original schedule. But, because of the stay, CPP

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[199] Order, *Chamber of Commerce v. EPA*, No. 15-A-787 (Sup. Ct. Feb. 9, 2016).

[200] *The Clean Power Plan is gone – and there's no 'replace'*, E&E News (Mar. 9, 2017), available at http:/www.eenews.net/stories/1060051196 (last visited March 9, 2017).

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implementation – if it occurs at all – could be years behind schedule. As a result, the true cost implications of the ELG Rule are not reflected in any EPA analysis.

As already described, the CCR rule also is being challenged in court,[201] and EPA has been granted a voluntary remand of portions of the rule. The remaining litigation issues could be decided by the court, possibly by the end of this year. Additionally, Congress recently enacted legislation that affected a major change in the CCR rule implementation.[202] The legislation allows states to assume responsibility for overseeing CCR rule implementation within their jurisdictions. Thus, substantial changes also may occur with the CCR rule.

Given the extreme uncertainties that were not present when EPA analyzed the cost impacts of these rules on the ELG Rule, it is incumbent upon EPA to reconsider the true costs of the ELG Rule and provide its analysis to the public for proper review and comment.

REQUEST FOR IMMEDIATE AGENCY ACTION TO SUSPEND OR DELAY COMPLIANCE DEADLINES

UWAG hereby requests an administrative stay pursuant to 5 U.S.C. § 705. When judicial review is pending and when "justice so requires," this section

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[201] *USWAG v. EPA.*

[202] Water Infrastructure Improvements for the Nation Act, Pub. L. 114-322, Sec. 2301 (amending § 4005 of the Solid Waste Disposal Act (42 U.S.C. § 6945) to allow state programs for control of coal combustion residuals).

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confers discretion upon an agency to "postpone the effective date of action taken by it." *Id.* For all the reasons above, justice dictates a stay here.

In addition, EPA should take all other administrative actions that may be necessary to assure the immediate suspension or delay of the Rule's fast-approaching compliance deadlines while EPA works to reconsider and revise, as appropriate, the substantive requirements of the current Rule pursuant to notice and comment rulemaking.[203] Notably, there are many options available for EPA to suspend or extend the compliance deadlines in order to preserve the status quo and avoid irreparable harm pending the completion of the reconsideration proceeding.[204]

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[203] Suspending the deadlines for indirect dischargers, among others, is particularly critical because they face a hard deadline of November 1, 2018, to meet the PSES/PSNS standards for several wastestreams. Accordingly, those dischargers are in the process now of making costly decisions that may be greatly affected by reconsideration.

[204] These options for EPA action include the following: (1) fast-tracked issuance of a new rule that rescinds or extends the compliance deadlines through an expedited notice and comment rulemaking, *see, e.g.*, National Emissions Standards for Hazardous Air Pollutants for Stationary Combustion Turbines; Final Rule; Stay, 69 Fed. Reg. 51,184 (Aug. 18, 2004) (pausing effective dates of a rule on the basis that the agency was in the process of amending the underlying rule); (2) prompt issuance of an interim final rule without notice and comment under the "good cause" exemption set forth in the APA at 5 U.S.C. § 553(b)(3)(B), *see* Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; Interim Final Rule, 68 Fed. Reg. 1348 (Jan. 9, 2003) (postponing requirements that had gone into effect in August 2002 without notice and comment under the good cause exemption on the basis of impending deadlines that would no longer be appropriate once EPA finished revising the underlying rule); and (3) the prompt issuance of informal EPA guidance confirming that permitting authorities have broad discretion to set compliance deadlines under the Rule spanning the *entire* compliance window based on the four factors enumerated in 40 C.F.R. § 423.11(t) and are not obligated to impose a compliance deadline based on the initial deadline of November 1, 2018, due, in part, to EPA's decision to reconsider the substantive requirements of the Rule.

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CONCLUSION

For all the foregoing reasons, EPA should grant this Petition, stay the Final ELG Rule and/or take other action to suspend the Rule's existing compliance deadlines, and promptly undertake to initiate a new rulemaking.

Dated: March 24, 2017

UTILITY WATER ACT GROUP

By _____
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EXHIBITS

Exhibit 1 H.M. Johnson, III, Hunton & Williams. Letter to M. McDermott, U.S. Dept. of Justice - Request for Disclosure of Information Withheld As Confidential Business Information From the Public Record for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Final Rule (Feb. 17, 2016)

Exhibit 2 M. McDermott, U.S. Dept. of Justice. Letter to H.J. Johnson, III, Hunton & Williams – Response to Request for Disclosure of Information Withheld As Confidential Business Information From the Public Record for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Final Rule (Mar. 17, 2016)

Exhibit 3 Appendix 1 to Duke Energy Indiana, LLC's Application for a Fundamentally Different Factor Variance, Edwardsport IGCC Station, NPDES Permit IN0002780, submitted to EPA Region V and Indiana Dept. of Environmental Management (April 27, 2016)

Exhibit 1

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February 17, 2016

Via E-Mail and U.S. Mail

Martin F. McDermott, Esq.
United States Department of Justice
601 D Street, NW
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P.O. Box 23986
Washington, DC 20026-3986

Re: Request for Disclosure of Information Withheld As Confidential Business Information From the Public Record for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Final Rule

Dear Martin:

As you know, I represent the Utility Water Act Group, Southwestern Electric Power Company, and Union Electric Company (d/b/a Ameren Missouri) (collectively, "Industry Petitioners") in challenges to EPA's promulgation of the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Final Rule (the "ELG Rule" or "Rule") under the Clean Water Act ("CWA"). This letter requests the disclosure of EPA's methodologies and analyses supporting the ELG Rule that have been improperly withheld as confidential business information ("CBI"). In addition, our review reveals that EPA has "over-redacted" many documents, with the result being that important non-CBI information has been improperly withheld from the public record. We request such non-CBI information as well. Attachment A is a preliminary list of documents in the public record that withhold information to which Industry Petitioners are entitled and that have been identified so far in our review of the record. As discussed in detail below, EPA is required to disclose all this information.

Judicial review of agency decisions under the Administrative Procedure Act ("APA") is based upon the "whole record," which includes all the material "considered" by the agency

decisionmaker. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1971). Since publishing the final ELG Rule in the *Federal Register* on November 3, 2015, EPA has publicly released many of the documents it considered when promulgating the Rule. However, EPA determined that many critical documents and other information it considered are CBI. As a result, EPA has withheld these materials from inclusion in the public record for the ELG Rule, impeding Industry Petitioners' right to challenge to the Rule and thereby frustrating judicial review of the same.

I recognize that CBI is ordinarily protected from disclosure under applicable law. For instance, the Freedom of Information Act ("FOIA") exempts CBI from mandatory disclosure. *See* 5 U.S.C. § 552(b)(4). But, on the other hand, the CWA authorizes the disclosure of CBI "when relevant in any proceeding under" the CWA. 33 U.S.C. § 1318(b). EPA's FOIA regulations go on to provide that a "proceeding," in the context of the CWA, includes "any rulemaking...conducted by EPA," such as the promulgation of the ELG Rule. 40 C.F.R. § 2.302(a)(4); *see id.* at § 2.302(g) (prescribing procedures for release of "relevant" CBI).

In any event, Industry Petitioners do not specifically seek the disclosure of CBI provided to EPA by the public in the course of the ELG rulemaking. Instead, Industry Petitioners request only the disclosure of the methodologies and analyses EPA relied upon in promulgating the Final Rule (as well as non-CBI information that has been withheld). In past rulemakings, EPA has recognized its obligation to present its methodologies and analyses in the public record, even when it used CBI to develop or apply them. It has done so by employing techniques to ensure that the bases for its decisions were fully explained without the need to disclose the CBI itself. EPA has not employed those techniques here. Not only has the CBI been withheld, but the methodologies and analyses themselves have been withheld.

EPA has a strong interest in making these methodologies and analyses public, because it must rely on and justify the ELG Rule in the courts based on the public record standing alone. Courts have shown a particular reluctance to permit EPA to withhold crucial information from a public rulemaking record on the basis that it is CBI. When EPA makes such claims, it must still provide adequate explanation in the public record to support the rulemaking through the use of non-CBI data, methodologies, and analyses that satisfy the standard upon review. *See Nat'l Wildlife Fed'n v. EPA*, 286 F.3d 554, 565 (D.C. Cir. 2002). To satisfy this requirement, it is appropriate for EPA to compile the CBI in the rulemaking record into a composite, non-CBI format that is made part of the public record and discussed by the agency "at some length." *Natural Resources Defense Council v. Thomas*, 805 F.2d 410, 418 n. 13 (D.C. Cir. 1986). At bottom, the public record must be sufficient for petitioners "to mount a challenge

to EPA's rulemaking," Order, *Nat'l Wildlife Fed'n*, Feb. 2, 2000, Attach. B, and "to provide the reviewing court with a way to know the agency's methodology." *Nat'l Wildlife Fed'n*, 286 F.3d at 564 (internal quotation and citation omitted).

The public record here falls far short of the requirements under the APA, CWA, EPA regulations, and case law. EPA has designated data and analyses that are crucial to understanding the ELG Rule, and EPA's methodology in promulgating it, as CBI, and failed to provide sufficient non-CBI data and analyses to support the Rule.

For example, in one document, EPA designated entire sections of a report as CBI. In its Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, Sep. 2015, EPA-HQ-OW-2009-0819-6472, EPA withheld whole sections of the report on General Methodology, Terminology, and Common Cost Elements, FGD Wastewater Cost Methodology, Fly Ash Transport Water Cost Methodology, and Bottom Ash Transport Water Cost Methodology. Based on the document's table of contents, the omitted sections comprise over 260 pages, covering such basic information as descriptions of the technologies analyzed and such critical information as cost methodologies. Consequently, the cost methodologies are a complete mystery. It is unclear why the *entirety* of these sections would be classified as CBI or not made available in a manner to avoid disclosing CBI.

In another example, in its Technical Development Document for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, EPA references a memorandum produced by the Eastern Research Group, entitled "Bottom Ash and Fly Ash Transport Water Pollutants of Concern (POC) Analysis Methodology," to explain its review of "bottom ash transport water and fly ash transport water using the general data quality review criteria described in this section, *as well as more specific criteria listed in the memorandum*." EPA-HQ-OW-2009-0819-6432, at 6-23 (emphasis added). Nevertheless, EPA has withheld the *entire* memorandum from the public record as CBI, *see* EPA-HQ-OW-2009-0819-6049, making it impossible for the public to know what criteria EPA employed to identify POCs for bottom ash and fly ash transport water.

The record is replete with other examples and the Industry Petitioners continue their review of the record to identify examples in addition to these and those listed in Attachment A. In each case, EPA has violated the law by failing to release the basic and fundamental methodologies and analyses that support the ELG Rule. With the public record as it currently stands, it is a complete mystery to the public and reviewing courts how EPA reached its conclusions on

critical issues. EPA should have employed techniques to protect the CBI while simultaneously making available to the public the methodologies and analyses on which EPA made its decisions. Instead, it decided to improperly withhold critical methodologies and analyses in their entirety, presumably because they contain or discuss some amount of CBI. And even where EPA did manage to release redacted versions of documents, such as discussed above regarding the Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, it still failed to produce non-CBI versions of the redacted methodologies and analyses to support the ELG Rule without revealing CBI.

The FGD wastewater limits are an example of EPA's failure to disclose its methodologies. We have been unable to locate any document explaining how EPA calculated those limits. Whether or not its non-disclosure is the result of over-designating CBI, this methodology is fundamental to the ELG rule. Industry Petitioners request its disclosure as part of the record.

As explained above, all of the methodologies and analyses sought by the Industry Petitioners should be in the public record whether in redacted form or in a form that otherwise protects the CBI. I respectfully ask EPA to compile the methodologies and analyses it considered in the ELG rulemaking and present them in a manner that allows the public and reviewing courts to review EPA's compliance with the CWA, APA, and other applicable law, without improperly disclosing CBI. In addition, EPA should withhold from the public record only actual CBI, not non-CBI data and information. We ask that EPA review its redactions and remove those redactions that improperly conceal non-CBI information.

I would further suggest that the parties agree to continue to hold the case in abeyance until the public record is complete.

This request applies to EPA's methodologies and analyses in the final ELG Rule, as well as any data that are necessary to explain those methodologies and analyses. The Industry Petitioners do not waive their rights to challenge whether various data or documents meet the requirements of CBI, or to expand the list of documents sought as reflected in Attachment A.

HUNTON&
WILLIAMS

I would greatly appreciate a response by February 29, 2016, so that the Industry Petitioners can decide how to proceed. In the meanwhile, please do not hesitate to contact me if you wish to discuss. Best regards.

Sincerely,

Pete

Harry M. Johnson, III

Enclosure

Attachment A

Document Title	Docket Number	Docket Abstract
Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Chapter 5 – General Methodology, Terminology, and Common Cost Elements DCN SE05831	EPA-HQ-OW-2009-0819-6023[1]	CBI Final Draft of the Steam Electric Incremental Costs and Pollutant Loadings report. This version of the report contains confidential business information.
Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Chapter 6 –FGD Wastewater Cost Methodology DCN SE05831	EPA-HQ-OW-2009-0819-6023	CBI Final Draft of the Steam Electric Incremental Costs and Pollutant Loadings report. This version of the report contains confidential business information.
Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Chapter 7 – Fly Ash Transport Water Cost Methodology DCN SE05831	EPA-HQ-OW-2009-0819-6023	CBI Final Draft of the Steam Electric Incremental Costs and Pollutant Loadings report. This version of the report contains confidential business information.
Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Chapter 8 – Bottom Ash Transport Water Cost Methodology DCN SE05831	EPA-HQ-OW-2009-0819-6023	CBI Final Draft of the Steam Electric Incremental Costs and Pollutant Loadings report. This version of the report contains confidential business information.
Incremental Costs and Pollutant Removals: Attachment A-CBI Appendix A to the Costs and Loads Report – DCN SE05831A1	EPA-HQ-OW-2009-0819-6023-Att 1	CBI_Appendix A to the Costs and Loads Report includes plant-level estimated compliance costs and pollutant removals that incorporate the CCR rule and the CPP rule.

[1] To the extent that any of the redacted content of the "sanitized" version of this document and its attachments (EPA-HQ-OW-2009-0819-6472 and attachments) differs from the content of the CBI version and its attachments (EPA-HQ-OW-2009-0819-6023 and attachments), we also request release of the redacted content of the sanitized version and its attachments.

Document Title	Docket Number	Docket Abstract
Incremental Costs and Pollutant Removals: Attachment B-CBI Appendix B to the Costs and Loads Report – DCN SE05831A2	EPA-HQ-OW-2009-0819-6023-Att 2	CBI_Appendix B to the Costs and Loads Report includes plant-level estimated compliance costs and pollutant loadings reflecting only ELGs costs and loads and costs and loads with the CCR rule incorporated.
CBI GE ABMet Pilot Study Report – DCN SE06361	EPA-HQ-OW-2009-0819-6456	CBI Report from GE Water describing results of a pilot study conducted using its ABMet biological treatment system. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Notes from Call with GE Water on April 14, 2014 – DCN SE05692	EPA-HQ-OW-2009-0819-5735	CBI_Call with GE discussing ORP treatment at a coal-fired power plant. This document contains CBI and is not available online or from the EPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Memorandum to the Steam Electric Rulemaking Record: Water Quality Module: Plant and Receiving Water Characteristics – DCN SE04513	EPA-HQ-OW-2009-0819-6450	CBI Memorandum documenting the identification of immediate receiving waters for the steam electric power plants in the Final EA Report and incorporation of water body characteristics for use in EA analyses, including the national-scale immediate receiving. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Email from Bill Bonkowki; RE: Clarification on Updated ABMet Costs from June 2014 – DCN SE04234	EPA-HQ-OW-2009-0819-5718	This document contains CBI and is not available online or from the EPA Docket Center. Please contact the Document Control Officer listed in the Federal Register. CBI Documentation of follow up questions provided to GE regarding some outstanding questions based on their updated costing data for the ABMet system. GE provided updated costs for the ABMet system via email in June 2014 (SE04230). EPA and ERG responded

Document Title	Docket Number	Docket Abstract
CBI GE ABMet Backwash Information – DCN SE00751	EPA-HQ-OW-2009-0819-5691	This document contains CBI and is not available online or from the EPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 1 – DCN SE05839A1	EPA-HQ-OW-2009-0819-5681-Att 1	CBI Development of methodology to estimate missing FGD wastewater flow rates for plants currently operating wet FGD scrubbers. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 2 – DCN SE05839A2	EPA-HQ-OW-2009-0819-5681-Att 2	CBI Documentation of process used to identify those plants discharging FGD wastewater and determination of FGD wastewater flow rate. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 6 – DCN SE05839A6	EPA-HQ-OW-2009-0819-5681-Att 6	CBI Identification of plants that incur back-up silo and pugmill or redundancy compliance costs associated with fly ash handling. Also includes a comparison of O&M costs associated with dry fly ash handling and traditional wet sluicing systems. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 11 – DCN SE05839A11	EPA-HQ-OW-2009-0819-5681-Att 11	CBI Development of methodology to estimate dollar per ton costs to transport and dispose of treatment solids to an off-site landfill. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.

Document Title	Docket Number	Docket Abstract
CBI Supplemental Costs and Loadings Attachment 13 – DCN SE05839A13	EPA-HQ-OW-2009-0819-5681-Att 13	CBI Plant-specific assessments and determinations of FGD wastewater treatment in place. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 15 – DCN SE05839A15	EPA-HQ-OW-2009-0819-5681-Att 15	CBI Development of annual FGD wastewater treatment flows for plant operating chemical precipitation; development of capacity factor used to size FGD wastewater treatment systems This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 16 – DCN SE05839A16	EPA-HQ-OW-2009-0819-5681-Att 16	CBI Development of factor used to determine the flow rate of sludge generated by chemical precipitation as a function of FGD wastewater flow This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 37 – DCN SE05839A37	EPA-HQ-OW-2009-0819-5681-Att 37	CBI Assessment of materials of construction for wastewater treatment tanks This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 39 – DCN SE05839A39	EPA-HQ-OW-2009-0819-5681-Att 39	CBI Development of an algorithm to determine whether chemical storage tanks are required (as opposed to onsite storage in chemical totes), and if so, the tank size requirements This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.

Document Title	Docket Number	Docket Abstract
CBI Supplemental Costs and Loadings Attachment 44 – DCN SE05839A44	EPA-HQ-OW-2009-0819-5681-Att 44	CBI Development of an algorithm to estimate lime storage requirements and lime storage silo size. Development of a cost equation for lime feed system purchase costs This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 45 – DCN SE05839A45	EPA-HQ-OW-2009-0819-5681-Att 45	CBI Chemical feed system specifications provided by a vendor This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 54 – DCN SE05839A54	EPA-HQ-OW-2009-0819-5681-Att 54	CBI Development of the design basis and treatment in place methodology for clarifiers This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 56 – DCN SE05839A56	EPA-HQ-OW-2009-0819-5681-Att 56	CBI Filter press information and purchase costs provided by a vendor This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 58 – DCN SE05839A58	EPA-HQ-OW-2009-0819-5681-Att 58	CBI Filter press specifications provided by a vendor This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 63 – DCN SE05839A63	EPA-HQ-OW-2009-0819-5681-Att 63	CBI_Development of cost factors used to estimate total direct capital costs (i.e., installation, site prep, buildings, land, and instrumentation and controls) as a function of purchased equipment. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.

Document Title	Docket Number	Docket Abstract
CBI Supplemental Costs and Loadings Attachment 65 – DCN SE05839A65	EPA-HQ-OW-2009-0819-5681-Att 65	CBI Development of a cost equation for operating labor costs This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 66 – DCN SE05839A66	EPA-HQ-OW-2009-0819-5681-Att 66	CBI Development of cost factors used to estimate labor and maintenance materials costs as a function of annual FGD wastewater flow This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 67 – DCN SE05839A67	EPA-HQ-OW-2009-0819-5681-Att 67	CBI Development of chemical dosage rates This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 68 – DCN SE05839A68	EPA-HQ-OW-2009-0819-5681-Att 68	CBI Chemical purchase costs provided by vendors This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 72 – DCN SE05839A72	EPA-HQ-OW-2009-0819-5681-Att 72	CBI Development of an equation to estimate chemical precipitation dewatered sludge generation as a function of FGD wastewater flow. Estimation of density of dewatered chemical precipitation dewatered sludge This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 73 – DCN SE05839A73	EPA-HQ-OW-2009-0819-5681-Att 73	CBI Development of equation to estimate ABMet backwash flow rate and backwash solids generation. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.

Document Title	Docket Number	Docket Abstract
CBI Supplemental Costs and Loadings Attachment 75 – DCN SE05839A75	EPA-HQ-OW-2009-0819-5681-Att 75	CBI Correspondence with General Electric (GE) regarding costing information for their ABMet biological treatment system. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 76 – DCN SE05839A76	EPA-HQ-OW-2009-0819-5681-Att 76	CBI Summary of correspondence with General Electric (GE) regarding updated costing information for their ABMet biological system as of 2014. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 78 – DCN SE05839A78	EPA-HQ-OW-2009-0819-5681-Att 78	CBI Derivation of ORP Monitor costing methodology. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 79 – DCN SE05839A79	EPA-HQ-OW-2009-0819-5681-Att 79	CBI Summary of correspondence with ABB regarding capital costs and O&M requirements associated with an ORP Monitor. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register
CBI Supplemental Costs and Loadings Attachment 83 – DCN SE05839A83	EPA-HQ-OW-2009-0819-5681-Att 83	CBI Development of factor used to calculate costs associated with purchasing materials used for maintaining the biological treatment system.
CBI Supplemental Costs and Loadings Attachment 84 – DCN SE05839A84	EPA-HQ-OW-2009-0819-5681-Att 84	CBI Compilation of data from GE and HPD regarding costing information for the vapor compression evaporation system. Cost curves and equations developed from vendor data were used to estimate system level costs for installing and operating a vapor compres

Document Title	Docket Number	Docket Abstract
CBI Supplemental Costs and Loadings Attachment 85 – DCN SE05839A85	EPA-HQ-OW-2009-0819-5681-Att 85	CBI Methodology used to estimate O&M costs associated with sodium bisuflite addition. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI supplemental Costs and Loadings Attachment 87 – DCN SE05839A87	EPA-HQ-OW-2009-0819-5681-Att 87	CBI Development of factors and equations for the fly ash handling conveyance capital and O&M costs. These equations and factors include the conveyance equipment capital cost equation, redundant equipment capital cost equations, direct capital cost factor, This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 88 – DCN SE05839A88	EPA-HQ-OW-2009-0819-5681-Att 88	CBI Development of factors and equations for the fly ash handling intermediate capital and O&M costs. These equations and factors include the intermediate storage equipment capital cost equation (for concrete and steel silos), direct capital cost factor, This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 89 – DCN SE05839A89	EPA-HQ-OW-2009-0819-5681-Att 89	CBI Development of the typical moisture content used to calculate the amount of moisture conditioned fly ash to be transported to a landfill. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.

Document Title	Docket Number	Docket Abstract
CBI Supplemental Costs and Loadings Attachment 92 – DCN SE05839A92	EPA-HQ-OW-2009-0819-5681-Att 92	CBI Development of factors for the bottom ash MDS conveyance O&M costs. These factors include the conveyance operating and maintenance labor rates, operating and maintenance labor hours, maintenance materials cost factor. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 93 – DCN SE05839A93	EPA-HQ-OW-2009-0819-5681-Att 93	CBI Development of factors for the bottom ash intermediate storage O&M costs. These factors include the intermediate storage operating and maintenance labor rates, operating and maintenance labor hours, maintenance materials cost factor, and pugmill energ This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 96 – DCN SE05839A96	EPA-HQ-OW-2009-0819-5681-Att 96	CBI Development of the typical moisture content used to calculate the amount of moisture conditioned bottom ash to be transported to a landfill. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 97 – DCN SE05839A97	EPA-HQ-OW-2009-0819-5681-Att 97	CBI Telecon and email correspondence with bottom ash handling vendor containing information on bottom ash handling conversions and specific costs for bottom ash conversions, drag chain replacement costs, and drag chain replacement frequency. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.

Document Title	Docket Number	Docket Abstract
CBI Supplemental Costs and Loadings Attachment 98 – DCN SE05839A98	EPA-HQ-OW-2009-0819-5681-Att 98	CBI Development of the equation to estimate the volume of the remote MDS conveyor to estimate the volume of surge capacity required for maintenance. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Supplemental Costs and Loadings Attachment 100 – DCN SE05839A100	EPA-HQ-OW-2009-0819-5681-Att 100	CBI Methodology used to estimate compliance costs for plants discharging IGCC wastewater. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Updated ABMet Cost Curve – DCN SE04230	EPA-HQ-OW-2009-0819-5658	CBI_New cost curve from GE to reflect updated costs for the ABMet system. This new costing data includes updated installed costs based on flow rate as of July 2014. This document contains CBI and is not available online or from the EPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
Memorandum-Bottom Ash and Fly Ash Transport Water Pollutants of Concern (POC) Analysis Methodology – DCN SE04745	EPA-HQ-OW-2009-0819-6049	CBI. This memorandum provides details on EPA analysis of ash transport water data to determine pollutants of concern associated with this wastestream.
Analysis – CBI Pollutants of Concern Ash Treatment Analysis – DCN SE04746	EPA-HQ-OW-2009-0819-6050	CBI. This spreadsheet was developed as part 2 of EPA's analysis to identify pollutants of concern in ash transport water. This spreadsheet contains all non-paired ash transport water data accepted by EPA and the results of part 2 of the POC analysis.

Document Title	Docket Number	Docket Abstract
Data – CBI Final Ash Transport Water Analytical Data Review Matrix – DCN SE05575	EPA-HQ-OW-2009-0819-6381	CBI_This MS Excel workbook supporting the review of all data sources identified with ash transport water data. Information about the data source identification, plant identification, wastestream identification, and sample identification were compiled in this matrix to evaluate data usability, representativeness, and characterization. All data sources in the matrix were evaluated with EPA's ash data acceptance criteria.
Data – CBI FGD & Ash Cost Model with and without CCR – DCN SE05841	EPA-HQ-OW-2009-0819-6028	CBI_Database used to calculate compliance costs for FGD, fly ash and bottom ash for populations of plants including and not including CCR.
CBI FGD & Ash Cost Model Database Dictionary – DCN SE05841.A1	EPA-HQ-OW-2009-0819-6028-Att 1	CBI_Data element dictionary for the FGD and Ash Steam Electric Cost Model. This excel file contains descriptions of the tables, field names, and code modules contained within the FGD and Ash Steam Electric Cost Model.
Analysis-CBI Source Water Ash Treatment Analysis Final – DCN SE04744	EPA-HQ-OW-2009-0819-6048	CBI. This spreadsheet was developed as part 1 of EPAs analysis to identify pollutants of concern in ash transport water. This spreadsheet contains all paired source water and ash transport water data accepted by EPA and the results of part 1 of the POC analysis.
CBI Memorandum to the Steam Electric Rulemaking Record: Steam Electric Effluent Guidelines Evaluation of Potential Subcategorization Approaches – DCN SE05813	EPA-HQ-OW-2009-0819-6206	CBI Memorandum describing the evaluation of potential subcategorization and threshold approaches.
Data – CBI Bottom Ash Complete Recycle Estimated Cost for Plants with Remote MDS systems to implement Complete Recycle of Bottom Ash Transport Water Calculation File – DCN SE05960	EPA-HQ-OW-2009-0819-6213	CBI_Calc file used to estimate costs associated with implementing complete recycle of bottom ash transport water at plants with remote MDS installations.

Document Title	Docket Number	Docket Abstract
Data – CBI Draft UCC Ash Handling Documentation Attachments 1 through 8 for UCC Review – DCN SE05922	EPA-HQ-OW-2009-0819-6151	CBI Attachments 1 through 8 to the UCC ash handling documentation. These attachments include fly ash and bottom ash handling conversion data delivered to UCC on September 9, 2015 for review. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
Data – CBI Intake Analysis Database for CCR Population – DCN SE05696	EPA-HQ-OW-2009-0819-6003	CBI_This database calculates the percent water reduction for plants using raw water for their FGD, bottom ash, and fly ash systems. Also contains estimates for if plants recycle ash transport water.
Data – CBI Intake Analysis Database for CPP Population – DCN SE05697	EPA-HQ-OW-2009-0819-6005	CBI_This database calculates the percent water reduction for plants using raw water for their FGD, bottom ash, and fly ash systems. Also contains estimates for if plants recycle ash transport water.
CBI Additional GE Response to Post Proposal Questions – DCN SE04208	EPA-HQ-OW-2009-0819-5650	CBI_Answers provided by GE in response to EPA questions regarding issues raised during the comment period. These responses are in addition to the initial responses provided in DCN SE04202.
CBI Supporting Charts for GE's Response to Post Proposal Questions – DCN SE04208A1	EPA-HQ-OW-2009-0819-5650-Att 1	CBI Additional charts provided along with response to questions. This document contains CBI and is not available online or from the EPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI GE Written Response to Additional Follow Up Questions – DCN SE04222	EPA-HQ-OW-2009-0819-5655	CBI_GE provided written response to the follow up questions that were provided to them in writing (SE04209) and discussed in a meeting with EPA and ERG on April 14, 2014.

Document Title	Docket Number	Docket Abstract
CBI Attachment to GE Written Responses – DCN SE04222A1	EPA-HQ-OW-2009-0819-5655-Att 1	CBI_An updated graph provided as an attachment to the written responses provided by GE. This document contains CBI and is not available online or from the EPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
Data – CBI Leachate Cost Model – DCN SE05842	EPA-HQ-OW-2009-0819-6029	This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register. CBI_Database used to calculate compliance costs for leachate.
CBI – Leachate Cost Model Database Dictionary – DCN SE05842A1	EPA-HQ-OW-2009-0819-6029-Att 1	CBI_Data element dictionary for the Leachate Steam Electric Cost Model. This excel file contains descriptions of the tables, field names, and code modules contained within the Leachate Steam Electric Cost Model. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
Data – CBI Leachate Loadings Database with CPP – DCN SE05860	EPA-HQ-OW-2009-0819-6039	CBI_Database used to calculate leachate pollutant loadings and removals for the proposed CPP population. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
Data – CBI FGD & Ash Cost Model with Proposed CPP – DCN SE05862	EPA-HQ-OW-2009-0819-6042	CBI_Database used to calculate compliance costs for FGD, fly ash and bottom ash for populations of plants reflecting the proposed CPP. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.

Document Title	Docket Number	Docket Abstract
CBI – FGD & Ash Cost Model with CPP Database Dictionary – DCN SE05862A1	EPA-HQ-OW-2009-0819-6042-Att 1	CBI_Data element dictionary for the FGD and Ash Steam Electric Cost Model with CPP. This excel file contains descriptions of the tables, field names, and code modules contained within the FGD and Ash Steam Electric Cost Model with CPP. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
CBI Memorandum to the Steam Electric Rulemaking Record: Steam Electric Effluent Guidelines – Evaluation of Potential Subcategorization Approaches – DCN SE05813	EPA-HQ-OW-2009-0819-6206	CBI Memorandum describing the evaluation of potential subcategorization and threshold approaches. This document contains CBI and is not available online or from the EPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
Data – CBI Subcategorization Threshold Calculation Database – DCN SE05960	EPA-HQ-OW-2009-0819-6220	This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register CBI_Database that documents EPA's evaluation of potential subcategorization associated with generating unit size capacity (in MW).
CBI Data Dictionary for the Subcategorization Threshold Calculation Database – DCN SE05960.A1	EPA-HQ-OW-2009-0819-6220-Att 1	This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register CBI_Database dictionary describing the tables, fields, and queries used in the subcategorization threshold analyses (DCN SE05960).

Attachment B

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-1452 **September Term, 1999**

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED FEB 2 2000
CLERK

National Wildlife Federation, et al.,
Petitioners

v.

Environmental Protection Agency and Carol M. Browner, Administrator, Environmental Protection Agency,
Respondents

American Forest and Paper Association Inc.,
Intervenor for Respondent

Consolidated with 99-1454, 99-1455, 99-1456

BEFORE: Ginsburg and Sentelle, Circuit Judges

ORDER

Upon consideration of the motion to dismiss, the responses thereto, and the replies; the motion filed by National Wildlife Foundation, et al. (collectively, NWF), to compel disclosure of information in the administrative record and to stay the briefing schedule until EPA discloses the information, the responses thereto, and the replies; the motions to strike, and the responses thereto; the motion of the Chemical Manufacturers Association and the Coalition for Effective Environmental Information to intervene or to file an amicus brief in opposition to NWF's motion to compel, and the responses thereto, it is

ORDERED that the motion to dismiss be referred to the merits panel to which these consolidated petitions for review are assigned. The parties are directed to include in their briefs the arguments raised in the motion to dismiss rather than incorporate those arguments by reference. It is

FURTHER ORDERED that the motions to strike be dismissed as moot. It is

No. 99-1452 **September Term, 1999**

FURTHER ORDERED that the motion to intervene or to file an amicus brief be denied. It is

FURTHER ORDERED that the motion to compel and to stay the briefing schedule be denied. The confidential business information NWF seeks is the type of sensitive information and confidential or trade secret information that EPA can properly withhold from public view. See Natural Resources Defense Council v. Thomas, 805 F.2d 410, 418 n.13 (D.C. Cir. 1986). The material contained in the public record appears sufficient for NWF to mount a challenge to EPA's rulemaking. See MD Pharm., Inc. v. DEA, 133 F.3d 8, 13-14 (D.C. Cir. 1998) (distinguishing agency actions in which documents relied on are "a complete mystery" and those in which the documents have been identified but not disclosed because they contain sensitive material).

The Clerk is instructed to process these consolidated cases for briefing and argument in the ordinary course.

Per Curiam

ED_002401_00003833-00105

Exhibit 2

U.S. Department of Justice

Environment and Natural Resources Division

Martin McDermott
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044

Telephone (202) 514-4122
Facsimile (202) 514-8865

March 17, 2016

Re: Response to Request for Disclosure of Information Withheld as Confidential Business Information From the Public Record for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Final Rule

Dear Pete:

This letter responds to your letter of February 17, 2016, requesting that EPA disclose certain documents withheld as confidential business information ("CBI") related to analyses for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Final Rule (the "Rule"). A careful review of the entire record demonstrates that EPA adequately explained its rationale for the Rule in documents that do not disclose information claimed as CBI. EPA is confident that the public record presents the methodologies and analyses the Agency used to reach its final determination in sufficient detail so that stakeholders as well as any reviewing court can consider whether the Agency's decisions were reasonable.

As noted in your letter, EPA removed from public view those documents that steam electric power generating facilities and others claimed as CBI. EPA is statutorily obligated to protect from disclosure all information claimed as CBI. *See Nat'l Wildlife Fed'n v. EPA*, 286 F.3d 554, 564-65 (D.C. Cir. 2002) ("EPA cannot be faulted for keeping [CBI] confidential" in a rulemaking record because CBI "may not be publicly disclosed" pursuant to CWA section 308(b).) The protocols that EPA used to identify and protect the CBI obtained or developed during this rulemaking are described in several documents in the record, including Section 3.8 of the publicly-available non-CBI version of Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category ("Costs and Pollutant Removals Report"). Document Control Number (DCN) SE05832; EPA-HQ-OW-2009-0819-6472. To prevent disclosing CBI, the Agency found it necessary to withhold from the public docket all information claimed as CBI as well as some additional data that, although not claimed as CBI, could inadvertently release CBI if made public. Where possible when dealing with CBI, EPA attempted to make information publicly available, using techniques such as aggregating certain data in the public docket, presenting

ranges of values, or masking plant identities to prevent CBI disclosure. The Agency's approach to protecting CBI ensures that the data in the public docket present the basis for the Rule and provide the opportunity for public comment, without compromising data confidentiality.

The public record contains a complete account of the methodologies and analyses underlying the Rule, notwithstanding EPA's protection of CBI. Your letter states that "the cost methodologies are a complete mystery" because EPA omitted 260 pages from the Costs and Pollutant Removals Report. Letter at 3. Yet your letter does not mention the "Non-CBI" version of the Costs and Pollutant Removals Report that EPA prepared for the proposed rule, which was available for review during the public comment period and remains publicly available. DCN SE03581; EPA-HQ-OW-2009-0819-2256; *see also* the Costs and Pollutant Removals Report for the Final Rule, DCN SE05832; EPA-HQ-OW-2009-0819-6472. These documents present the cost methodologies in great detail.

Other documents available to the public also discuss the cost methodologies used for the Rule. Section 9 of the Technical Development Document ("TDD") describes the cost methodologies used to analyze the technology options for each of the waste streams. DCN SE05904; EPA-HQ-OW-2009-0819-6432. Changes made to the cost estimates following proposal in response to public comments are presented in section V.D of the Federal Register notice for the final Rule. More detailed explanations of specific changes EPA made are included in EPA's comment response document, "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category: EPA's Response to Public Comments" ("Comment Response Document"), *see, e.g.*, Comment Codes 10b, 14b and 16b. DCN SE05958; EPA-HQ-OW-2009-0819-6469. In addition, at the time of proposal EPA made available to power companies certain CBI and CBI-deducible data related to their power plants so that they could review the plant-specific input and output data used by EPA's models to estimate costs and pollutant removals.

Your letter also states that CBI redactions, particularly the redaction of the "Bottom Ash and Fly Ash Transport Water Pollutants of Concern (POC) Analysis Methodology" memorandum, "make it impossible for the public to know what criteria EPA employed to identify POCs for bottom ash and fly ash transport water." Letter at 3. On the contrary, the record contains ample documentation of the criteria EPA employed to identify pollutants of concern for bottom ash and fly ash transport water. Section 12 of the non-CBI version of the "Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category" provides a comprehensive description of the criteria employed. DCN SE05832; EPA-HQ-OW-2009-0819-6472. The criteria are presented elsewhere as well, including in Section 6.6.4 of the TDD, "Pollutants of Concern: Ash Transport Water POCs," and discussed in response to specific comments in Part 6 of the Comment Response Document.

Finally, the suggestion in your letter that EPA has "fail[ed] to disclose its methodologies" for calculating the flue gas desulfurization (FGD) wastewater limits is inaccurate. The methodologies EPA used to calculate the effluent limitations for FGD wastewater are carefully described in the Section 13 and Appendix B of the TDD. EPA's data and methodologies are also explained elsewhere in the record, including in the "Statistical Support Document: Effluent Limitations for FGD Wastewater, Gasification Wastewater, and Combustion Residual Leachate for the Final Steam Electric Power Generating Effluent Limitations Guidelines and Standards,"

DCN SE05733, EPA-HQ-OW-2009-0819-6430, and in response to specific comments in Comment Code 31 in the Comment Response Document.

In compiling the record for this Rule, EPA balanced the privacy claims of steam electric power generating facilities, as well as vendors and others who provided EPA valuable data, with its commitment to a transparent and accountable rulemaking process. Although EPA did not disclose every document submitted to the Agency in order to appropriately protect confidentiality, the thousands of documents accessible in the public record provide ample explanation of the Agency's decisions.

In light of the robust public record for this Rule, there is no reason to defer litigation over it. Now that the period for filing petitions for review has concluded, EPA plans to file a certified index to the record. The Agency hopes that challenges can proceed expeditiously in order to maximize both industry certainty and the Rule's benefits to public health and the environment.

Sincerely,

Martin F. McDermott, Trial Attorney

ED_002401_00003833-00108

Exhibit 3

Appendix to Application of Duke Energy Indiana, LLC For a Fundamentally Different Factor Variance

Appendix 1

2013 and 2015 Data from Edwardsport IGCC Grey Water Treatment System

Appendix 1: 2013 and 2015 Data from Edwardsport IGCC Grey Water Treatment System

	Mercury, ng/l			Arsenic, ug/l			TDS, mg/l		
	Filtered	Influent	Effluent	Filtered	Influent	Effluent	Filtered	Influent	Effluent
ELG daily max / 30-day avg.			1.8 / 1.3			4 / -			38 / 22
5/9/2013						<0.06			
5/23/2013						<0.06			
6/6/2013						<6			
6/13/2013						<6			
7/22/2013			2.08						
7/24/2013						2			
7/31/2013						<0.6			
8/2/2013						<0.6			
8/8/2013			9.58						
8/25/2013						15			
9/5/2013						<0.06			
9/25/2013						<0.06			
10/3/2013			2.53						
10/8/2013						<0.6			
10/17/2013						<0.6			
9/8/2015	0.540	6.55	12.8	<1.0	1,100	<1.0	300	2,540	20
9/10/2015	<0.50	15.8	5.25	<1.0	120	<1.0	300	3,020	40
9/15/2015	<0.50	10.8	10.3	<2.0	120	<2.0	120	2,560	<10
9/17/2015	<0.50	21.2	6.55	<2.0	130	<2.0	280	2,090	20
9/22/2015	<0.50	22.0	10.8	<1.0	31	<1.0	324	2,200	10
9/24/2015	<0.50	23.4	11.5	<1.0	63	<1.0	322	2,140	<10
9/29/2015	<0.50	44.4	6.40	<1.0	67	<1.0	420	2,700	32
10/1/2015	<0.50	7.35	3.92	<1.0	42	<1.0	336	2,980	20
10/6/2015	<0.50	15.6	2.40	<1.0	33	<1.0	340	2,680	20
10/8/2015	<0.50	11.8	5.79	<1.0	38	<1.0	380	1,660	14
10/13/2015	<0.50	30.4	3.05	<1.0	210	<1.0	320	2,230	222
10/15/2015	<0.50	59.5	0.877	<1.0	230	<1.0	340	2,120	60
Maximum	**0.54**	**59.5**	12.8	**<2.0**	**1,100**	15	**420**	**3,020**	222
Average	**<0.50**	**22.4**	6.3	**<1.2**	**182**	**1.9**	**315**	**2,410**	39.8
Minimum	**<0.50**	**6.55**	**0.9**	**<1.0**	**31**	**<0.1**	**120**	**1,660**	**<10**
Count	**12**	**12**	**15**	**12**	**12**	**24**	**12**	**12**	**12**

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 3/15/2017 2:26:36 AM
To: Schwab, Justin [schwab.justin@epa.gov]; bruce.gelber@usdoj.gov; Jeffrey.Wood@usdoj.gov; Brandon.Middleton@usdoj.gov
Subject: Fwd: [redacted] appeal letter
Attachments: Attorney Client / DPP / Ex. 5 .pdf; ATT00001.htm

All- I apologize for this not actually reaching you last Friday. I will figure out where the ball dropped so it does not repeat itself. Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

> **From:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **To:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **Subject:** DPP / ACP / Ex. 5 **appeal letter**