



The Trump Administration's Effect on Climate Change Law & Regulation: What's in the Air?

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Climate Change & GHG Regulation Under the Trump Administration

- Agency Actions;
- Legal/Judicial Actions;
- Presidential Actions

EPA's Regulation of CO₂ from Power Plants

- *Endangerment and Cause and Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act* (December 15, 2009)
- *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Generating Units* (October 23, 2015)
- *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units* (October 23, 2015) (“Clean Power Plan”)

The Clean Power Plan (“CPP”)

- Published on October 23, 2015, but *never* went into force.
- The Obama Administration’s primary public policy mechanism for reducing greenhouse gas (“GHG”) emissions.
 - Goal to cut emissions 32 percent by 2030 from 2005 levels.
 - Set standards for CO₂ emissions from existing power plants based on three “building blocks” for reduction:
 1. Heat rate;
 2. Generation shifts from coal to natural gas; and
 3. Increased investment in renewable energy sources for generation.

The Road to Repeal the CPP

March 28, 2017: Executive Order 13783. “Promoting Energy Independence and Economic Growth”



April 28, 2017: The D.C. Circuit granted EPA’s motion for a 60-day stay of the litigation challenging the CPP to review and potentially withdraw the rule



June 1, 2017: Withdrawal from the Paris Climate Agreement announced by President Trump



October 10, 2017: EPA issued formal notice of proposed rulemaking to repeal CPP



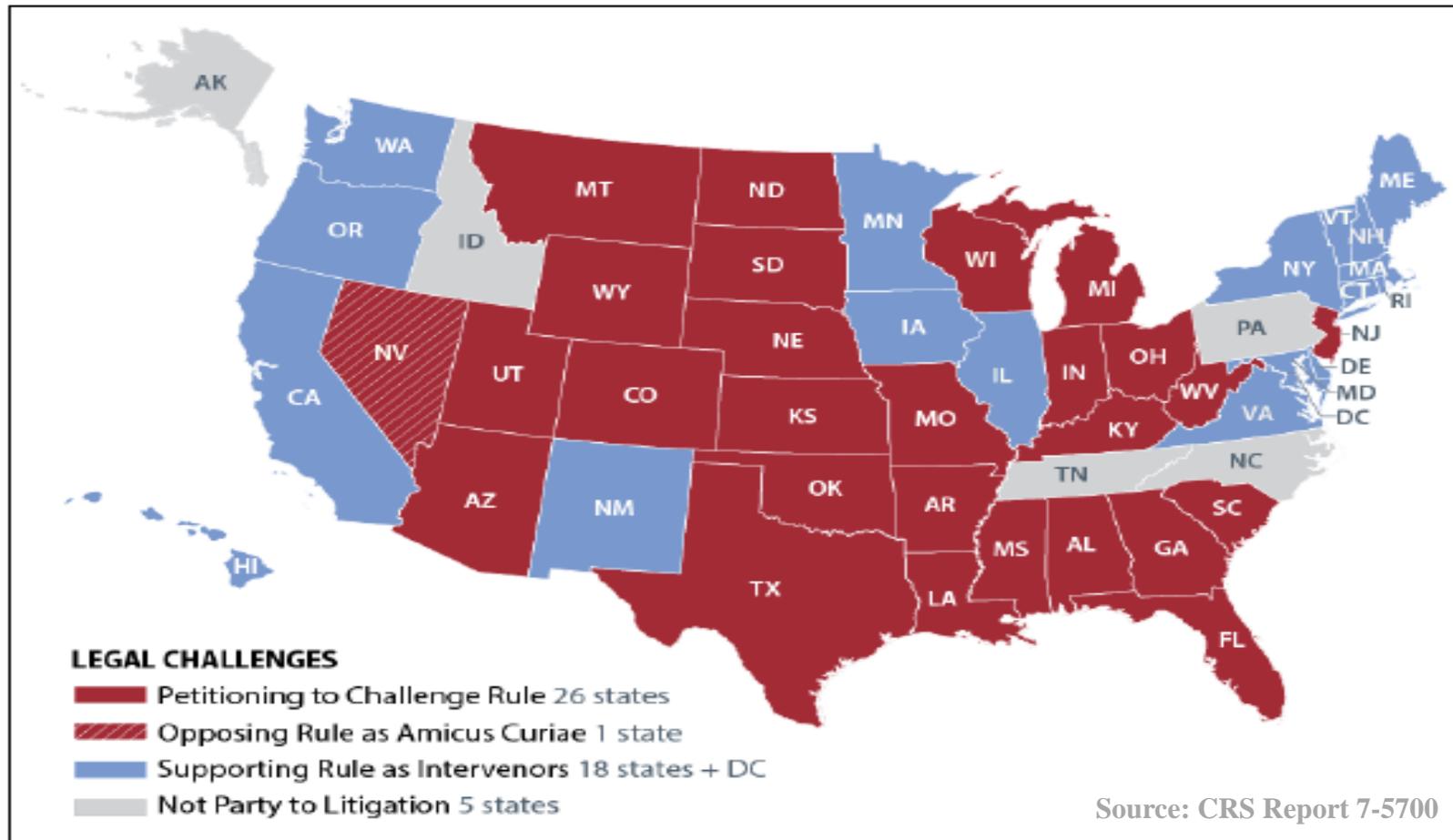
December 28, 2017: EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) seeking information and comment on a potential replacement to the CPP

Challenging the CPP: *West Virginia et. al. v. EPA*

- 27 states, and a number of industry petitioners filed petitions in 2016 to challenge the CPP.
- All petitions were consolidated *West Virginia et. al. v. EPA*
- Core of legal dispute was over the scope of Section 111(d) of CAA.
- The state challengers argued that Section 111 of the CAA authorizes EPA to issue rules relative to the performance of power plants (pollution controls, or operational standards), but does not allow for generation-shifting policies or the reorganization of states' energy mix.

Clean Power Plan in Litigation

Figure 1. States Participating in Clean Power Plan Litigation
Consolidated Petitions: *West Virginia et al. v. EPA et al.*, D.C. Circuit No. 15-1363



Source: Prepared by CRS from litigation filings in *West Virginia v. EPA*.

Notes: The Clean Power Plan, as finalized, did not set emissions goals for Alaska, Hawaii, Vermont, or the District of Columbia (the latter two because there are no affected electric generating units in those locations).

West Virginia et. al. v. EPA

- February 2017, the U.S. Supreme Court granted the January 2016 request by the state and industry petitioners to stay the CPP's implementation for the duration of the litigation.
- On April 28, 2017, the D.C. Circuit granted EPA's motion for a 60-day stay of the litigation so EPA could review, and potentially repeal, the rule. Subsequent EPA motions to hold the litigation in abeyance were granted in anticipation of EPA's action to repeal the CPP (the last was granted by the court on *November 9, 2017*)

Executive Order 13783: Promoting Energy Independence and Economic Growth (March 28, 2017)

The order begins by stating :

“It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Moreover, the prudent development of these natural resources is essential to ensuring the Nation's geopolitical security.”

Executive Order 13783: Promoting Energy Independence and Economic Growth (March 28, 2017)

- Review of all existing agency regulations, orders, guidance, policies, etc. that potentially burden the development or use of domestic energy resources (coal, oil, natural gas, nuclear)
- Rescind Climate related presidential and regulatory actions, including:
 - 2013 Executive Order Preparing the United States for the Impacts of Climate Change;
 - Presidential memos: 2013 Power Sector Pollution Standards; 2015 Presidential memo Mitigating Impacts on Natural Resources; 2016 Climate Change and National Security
 - Executive Office Reports: 2013 Climate Action Plan; 2014 Climate Action Plan Methane;
 - Council on Environmental Quality (“CEQ”) guidance on considering effects of climate change in NEPA reviews
- Suspend, revise or rescind the CPP
- Withdrew the guidance developed by the interagency work group on the social cost of greenhouse gases, which was used by agencies in regulatory impact analyses.
- Amend or withdraw the Federal Land Coal Leasing Moratorium;
- Suspend, revise or rescind the Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources (June 3, 2016) and certain rules promulgated by the Department of the Interior rules related to Oil and Gas development

The Paris Climate Agreement



- All nations have now signed onto the Paris Agreement
- A pledge to voluntarily abate GHG emissions, and to cooperate to achieve reductions through financing and support
- The U.S. pledged to reduce GHG emissions by 26-28% from 2005 levels, by 2025
- The CPP was seen as a regulatory mechanism necessary to achieve the goal

United States Pledge to Withdraw from the Paris Agreement

- By its terms, the United States cannot formally exit the Paris Agreement until 2020
- On June 1, 2017, President Trump announced that the United States will abandon the Paris Agreement
- “It is time to exit the Paris Accord -- and time to pursue a new deal that protects the environment, our companies, our citizens, and our country. It is time to put Youngstown, Ohio, Detroit, Michigan, and Pittsburgh, Pennsylvania -- along with many, many other locations within our great country -- before Paris, France.”

Paris Agreement – U.N. Convention (December 2017)



Good Morning Britain host Piers Morgan interview (Aired January 28, 2018)

“I believe in clean air. I believe in crystal-clear, beautiful ... I believe in just having good cleanliness in all. Now, with that being said, if somebody said go back into the Paris accord, it would have to be a completely different deal because we had a horrible deal.”

October 10, 2017

Notice of Proposed Rulemaking to Repeal CPP

- *Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 82 FR 48035
- EPA cites to its “inherent authority” to reconsider, repeal or revise its own past decisions as long as it provides a reasoned explanation for doing so
- EPA will accept comments on the proposed repeal of the CPP until April 26, 2018

October 10, 2017

Notice of Proposed Rulemaking

- CAA Section 111 requires EPA to promulgate emission guidelines for existing sources that reflect the “best system of emission reduction” (“BSER”)
- EPA proposed a legal interpretation of BSER as applied to 111(d) as limited to “inside the fence line” measures that can be applied to or at a an individual source. Not measures that the source’s owner can implement on behalf of the source at another location.
- Of the three building blocks that the CPP’s performance standards are based on, two of them exceed the EPA’s statutory authority, so the CPP must be repealed.
 - Improving heat rate at coal-fired power plants
 - Substituting increased generation from lower emitting sources and decreased generation from higher emitting sources fy1
 - Substituting increased generation from new zero emitting renewable electric generation and decreased from fossil-fuel

Slide 16

fy1

This isn't new. You had these pieces in red on the original presentaiton.

fyong, 1/26/2018

October 10, 2017 Notice of Proposed Rulemaking – Cost Analysis

- According to EPA, the CPP did not properly account for the costs of the rule in the CPP Regulatory Impact Analysis
- The October 10, 2017 rulemaking requested comments on the development of the Regulatory Impact Analysis, including the EPA's calculation of the costs and benefits of repealing the CPP

Methane Rule:

Clean Air Council v Pruitt

- June 2016, EPA issued a final rule establishing new source performance standards pursuant to the Clean Air Act for emissions of methane and other pollutants from the oil and natural gas industries (*Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources* (June 3, 2016))
- Industry groups sought EPA's reconsideration of the rule. EPA granted reconsideration on June 5, 2017 and temporarily stayed implementation of the rule
- June 16, 2017, EPA published a NPRM staying the implementation of the rule for an additional 2 years while EPA reconsidered it
- July 3, 2017, the DC Circuit court vacated EPA's stay of the rule, finding EPA acted arbitrarily when it granted reconsideration because industry groups had ample opportunity to comment on all four issues that EPA granted reconsideration
- August 10, 2017, DC Circuit's denied EPA's request for *en banc* rehearing

CPP Replacement – December 18, 2017 Advanced Notice of Proposed Rulemaking

- On December 18, 2017, Administrator Pruitt signed an ANPRM soliciting information on systems of emission reduction that are in accord with the EPA's legal interpretation contained in the October 10, 2017.
- An ANPRM allows an agency to gather information for potential rulemaking, but does not bind the agency to future action.
- EPA will accept comment on the ANPR until February 26, 2018.

Department of Energy NPRM

- September 28, 2017: DOE issued a NPRM for the *Grid Resiliency Pricing Rule*
 - The rule would provide cost recovery for plants with a 90-day fuel supply onsite, the intent of which is to make the electric grid more resilient
 - The proposed rule would have applied to nuclear, coal and oil
 - Sought final approval by FERC on an expedited basis (within 60 days of publication of the NPRM)
- January 8, 2018: FERC rejected the proposed rule finding that alleged grid resilience and reliability issues due to potential plant retirements were insufficient to demonstrate that existing tariffs were unjust or unreasonable.
 - FERC further found no evidence that allowing all eligible plants under the NPRM would be just and not unduly discriminatory or preferential under the Federal Power Act

Federal Climate Change Regulation: What's Next?

- States and environmental groups will likely challenge repeal of the CPP
 - New York Attorney General Eric Schneiderman announced that he will sue to stop the President's "irresponsible and illegal efforts to turn back the clock on public health" if and when the repeal of the CPP is finalized by EPA.
- Many industry groups have cheered the repeal of the CPP, but have voiced a preference for replacement of the CPP by a rule that is less onerous.
- A replacement to the CPP rule would likely be limited to efforts that could be taken "inside the fence-line." Recent indications are that EPA intends to have a replacement rule promulgated by the end of 2018 to provide time to defend the rule in court before the end of President Trump's term.
- Possible repeal/stay of the oil and gas (methane) rule by EPA using a different legal argument.
- Withdrawal from the Paris Agreement in accordance with the Agreement's timeframes.