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Trump and Pruitt's EPA: Are We Destined for a Seismic Shift in Environmental Law?

William Ryan

On February 17, 2017, the Senate confirmed Scott Pruitt, President Trump's nominee to serve as the Administrator of the United States Environmental Protection Agency ("EPA").¹ Previously, Pruitt was Oklahoma's Attorney General.² In that capacity, Pruitt gained notoriety for the frequency with which he sued the EPA during the Obama Administration.³ Throughout the nomination process, his detractors cited his lawsuits and his close ties to the oil and gas industry as reasons why he was not the proper individual to lead federal environmental efforts.⁴ In addition to his lawsuits challenging federal environmental regulations, Pruitt has questioned the validity of climate change, and whether humans have played any role in affecting climate change.⁵

As for President Trump, he repeatedly criticized the EPA and threatened to dismantle it during the 2016 presidential campaign, as well as during the presidential transition and the first weeks of his presidency.⁶ On the campaign trail, he promised to "cancel" the Paris Agreement, a climate change pact to reduce greenhouse gas emissions which was signed by nearly 200 countries.⁷ Notoriously, President Trump tweeted in November 2012 that climate change is a hoax.⁸ President Trump and Pruitt's views on climate change are a stark contrast from those of President Obama, who considered his administration's work on the environment to be among its biggest achievements.⁹ President Trump cannot quickly reverse every environmental regulation implemented

¹ Coral Davenport, *Senate Confirms Scott Pruitt as E.P.A. Head*, N.Y. TIMES (Feb. 17, 2017), https://www.nytimes.com/2017/02/17/us/politics/scott-pruitt-environmental-protection-agency.html?_r=0.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Coral Davenport, *Donald Trump Could Put Climate Change on Course for 'Danger Zone'*, N.Y. TIMES (Nov. 10, 2016), <https://www.nytimes.com/2016/11/11/us/politics/donald-trump-climate-change.html>.

⁸ *Id.*

⁹ *Id.*

under President Obama.¹⁰ However, he could weaken enforcement of these regulations.¹¹

President Trump Attempts to Breathe New Life into Coal Industry

In mid-February, President Trump signed legislation to undo the Office of Surface Mining's Stream Protection Rule ("Mining's Stream Protection Rule").¹² Throughout the 2016 Campaign, as President Trump noted when he signed the law, he promised to be an ally of the coal industry, and to bring back jobs in that sector.¹³ The Mining's Stream Protection Rule was an effort to keep streams safe from mining waste.¹⁴ Environmentalists supported the Mining's Stream Protection Rule as it protected waterways and was deemed to positively affect public health.¹⁵ The coal industry, however, vehemently opposed this Obama-era regulation, claiming that complying with the rule would be too costly.¹⁶ As a result of these costs, industry allies argued coal companies would have to lay off workers.¹⁷

On March 20, 2017, at a campaign-style rally in Louisville, Kentucky, President Trump told his supporters, "As we speak, we are preparing new executive actions to save our coal industry and to save our wonderful coal miners from continuing to be put out of work."¹⁸ He mentioned several times that he was considering weakening the Clean Power Plan, but offered no plan on how to do so.¹⁹ Kentucky Coal Association President J. Tyler White stated that he believed President Trump could create more coal jobs by investing in clean coal technology, something President Obama had done.²⁰ Unfortunately for Mr.

¹⁰ Davenport, *supra* note 7.

¹¹ *Id.*

¹² Devin Henry, *Trump Signs Bill Undoing Obama Coal Mining Rule*, THE HILL (Feb. 16, 2017), <http://thehill.com/policy/energy-environment/319938-trump-signs-bill-undoing-obama-coal-mining-rule>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Erica Peterson, *Trump Again Makes Promises to Coal Industry, Offers No Specifics*, WKU NPR (Mar. 21, 2017, 12:00 AM), <http://wkyufm.org/post/trump-again-makes-promises-coal-industry-offers-no-specifics#stream/0>.

¹⁹ *Id.*

²⁰ Peterson, *supra* note 18.

White and the miners he represents, President Trump's budget outline would cut the Department of Energy's coal technology funding.²¹

Clean Power Plan and Carbon Emissions

The Clean Power Plan was a program implemented by the Obama Administration to reduce carbon emissions at new and existing coal-burning plants.²² A joint federal-state program, the Clean Power Plan would reduce carbon emissions by one-third by 2030.²³ The Clean Power Plan is a central part of the United States' commitment to the Paris Agreement.²⁴ The constitutionality of the program has been challenged, and the case is currently at the U.S. Court of Appeals for the District of Columbia Circuit.²⁵ The EPA is a party to the suit, joined by environmental groups, against several states and industry lobbyists.²⁶

Undoing the Clean Power Plan "would be the most significant blow" of President Trump's environmental agenda, said Rees Alexander, a member of Squire Patton Boggs (US) LLP's Environmental, Safety & Health Practice.²⁷ "By removing that, states will not be likely to meet their renewable energy standards. The United States would then likely breach the Paris Agreement."²⁸

On March 28th, President Trump directed the EPA to begin undoing the Clean Power Plan, where, at the signing ceremony for the executive order, he told the coal miners in attendance, "you're going back to work."²⁹ He was making clear his intentions to stop the closing of coal-fired power plants, and

²¹ *Id.*

²² Juliet Eilperin, *Trump Is Poised to Issue a Sweeping Order Dismantling Obama's Climate Plan This Week*, WASH. POST (Mar. 14, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/03/14/trump-is-poised-to-issue-a-sweeping-order-dismantling-obamas-climate-plan-this-week/?utm_term=.191f4f9d31cf.

²³ *Id.*

²⁴ Chelsea Harvey, *Trump Has Vowed to Kill the Clean Power Plan. Here's how He Might — and Might not — Succeed*, WASH. POST (Nov. 11, 2016), https://www.washingtonpost.com/news/energy-environment/wp/2016/11/11/trump-has-vowed-to-kill-the-clean-power-plan-heres-how-he-might-and-might-not-succeed/?utm_term=.12da41a16241.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Interview with Rees Alexander, Member, Squire Patton Boggs (US) LLP Environmental, Safety & Health Practice Group, Columbus, Ohio (Mar. 10, 2017).

²⁸ *Id.*

²⁹ Coral Davenport & Alissa J. Rubin, *Trump Signs Executive Order Unwinding Obama Climate Policies*, N.Y. TIMES (Mar. 28, 2017), https://www.nytimes.com/2017/03/28/climate/trump-executive-order-climate-change.html?_r=0.

any plans to replace such power plants with solar and wind farms.³⁰ Reversing course on the Obama-era regulations negatively impacted the United States' commitment to the Paris Agreement.³¹ While President Trump's actions alone could not doom the Agreement, many climatologists believe it will cause high-polluting nations like India to delay the implementation of their own greenhouse gas-reducing policies.³² Eric T. Schneiderman, New York's Attorney General, vowed to fight the elimination of any greenhouse gas regulations, as he believed actions like President Trump's violate the Clean Air Act.³³ "If they want to go back into the rule-making process, we believe they are compelled under law to come up with something close to the Clean Power Plan," Schneiderman said.

Automobile Pollution and Job Creation

In 2012, the Obama administration set new fuel standards.³⁴ President Obama's goal was to increase fuel efficiency so that vehicles could travel 54.5 miles per gallon by 2025.³⁵ These standards would reduce carbon emissions, as part of President Obama's commitment to combatting climate change.³⁶ Yet, some automakers have complained that this was economically burdensome.³⁷ President Trump went to Michigan to announce that he was ordering the fuel efficiency standards to be reviewed.³⁸ The President believes that cutting this regulation would lead to new jobs, stating "the assault on the American auto industry is over."³⁹ However, Dennis Williams, the head of the United Auto Workers, told reporters that a cut back on efficiency would harm consumers, who have been helped by better mileage in their vehicles.⁴⁰

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Bill Vlasic, *Trump, Easing Emissions Rule, Vows to Expand Auto Jobs*, N.Y. TIMES (Mar. 15, 2017), <https://www.nytimes.com/2017/03/15/business/trump-auto-industry-emissions-rules.html>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

Recently, California made clear its intention to ignore President Trump's directive lessening fuel efficiency standards set in 2012.⁴¹ The California Air Resources Board, the state's clean air agency, voted for more stringent standards, as it received a waiver under the Clean Air Act to set its own emissions levels.⁴² D.C. and twelve other states, including New York, employ California's standards.⁴³ While President Trump has not offered many specifics, the EPA would revisit the 54.5 miles per gallon standard, and likely lower it.⁴⁴ Litigation will quickly ensue between the Trump administration and the thirteen states and D.C. (whose total population is about one-third of the nation's).⁴⁵

Enforcement by an Under-Funded EPA and the Future of Environmental Litigation

President Trump's initial budget outline significantly impacts the EPA.⁴⁶ In the proposal President Trump set forth, over fifty EPA programs would be eliminated.⁴⁷ These programs include, most notably, geographic watershed programs that protect waterways like the Chesapeake Bay and the Great Lakes.⁴⁸ "[Funding cuts] will scale back enforcement considerably, and positions will be cut," noted Alexander.⁴⁹ Alexander believes that much of the spending that remains for the EPA will be spent on undoing Obama-era regulations.⁵⁰ However, "no one wants to let egregious polluters go, especially when a corporation lies to regulators, like what Volkswagen did. President Trump does not want to be perceived as someone who lets things go, especially when it comes to foreign corporations."⁵¹ As the government enforces environ-

⁴¹ Hiroko Tabuchi, *California Upholds Auto Emissions Standards, Setting Up Face-Off with Trump*, N.Y. TIMES (Mar. 24, 2017), https://www.nytimes.com/2017/03/24/business/energy-environment/california-upholds-emissions-standards-setting-up-face-off-with-trump.html?mabReward=ACTM1&recp=0&action=click&pgtype=Homepage®ion=Column&module=recommendation&src=rechp&WT.nav=RecEngine&_r=0.

⁴² Tabuchi, *supra* note 41.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Gregory Korte, *The 62 Agencies and Programs Trump Wants to Eliminate*, USA TODAY (Mar. 16, 2017), <http://www.usatoday.com/story/news/politics/2017/03/16/what-does-trump-budget-eliminate/99223182/>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Interview with Rees Alexander, *supra* note 27.

⁵⁰ *Id.*

⁵¹ *Id.*

mental regulations less, Alexander predicts that citizen suits will rise.⁵² For example, “the Clean Water Rule, it is already litigated, and it has been stayed, but the ruling is final. The government won’t want to defend it. So, the question is will the court allow an intervener, like the Sierra Club, to defend the rule.”⁵³ In addition to suits from private citizens, attorneys general from states like California and New York will challenge President Trump’s EPA in the same way that Pruitt sued the EPA when he was Oklahoma’s Attorney General.⁵⁴

Conclusion

President Trump has repeatedly made promises to radically alter environmental policy and the EPA itself since he began his campaign in the summer of 2015. Though he has offered little in the way of details, his choice for EPA Administrator, Scott Pruitt, has the track record to execute such a vision. However, lessening environmental regulations will not be as simple as issuing executive orders. He and his administration will have to undergo the entire regulatory process – making scientific findings, taking public comment, and repeatedly writing new drafts – before the EPA can scrap or change any rules. Any such efforts will result in litigation, and the drastic changes President Trump has promised will take more time and cost more money than he likely imagined.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*