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Managing Business Risk: President Trump's Energy & Environment Regulatory Agenda

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Chicago - September 14, 2017

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Themes

- Regulatory reform = risks and opportunities
- Process matters: Admin Law 101
- The courts will have their say
- Repeal easy / replace harder
- Avoiding the “Yo-Yo” effect
- The power to delay
- States and NGO’s step into the breach
- Stress test for cooperative federalism
- Show me the budget
- The more things change...

Privileged & Confidential

Executive Order: Energy Independence



E.O. 13783 -- March 28, 2017

- Directly addresses:
 - Clean Power Plan
 - Oil and gas methane regulations
 - Coal leasing moratorium
 - Social cost of carbon metric
 - CEQ’s greenhouse gas guidance for NEPA
- Does not address:
 - Endangerment Finding
- Calls for potentially sweeping reexamination of U.S. policy
 - Initiates new OMB review process for all agencies whose actions “potentially burden” domestic energy resources
 - Also: actions “related to or arising from” 2013 Climate Action Plan
- Creates challenges and opportunities

EPA: Clean Power Plan Under Review



Clean Power Plan: Timeline

- Aug. 2015: Final rule
 - National standards limiting carbon emissions from existing coal and natural gas-fired power plants under Clean Air Act § 111(d)
- Feb. 2016: U.S. Supreme Court issues stay pending legal challenges brought by industry groups and >25 states
- Sept. 2016: DC Circuit hears argument, sitting en banc
- Apr. 2017: EPA initiates review
- Apr. 28: Court grants 60-day stay; asks whether to remand
- May 15: Supplemental briefs filed
- June 8: EPA submits proposal to rescind rule to OMB
- Aug. 8: Court* grants EPA more time to review its options
- *Two judges drop hint: will patience soon wear thin?

CPP: Questions and Implications

- “Repeal” or “Repeal and Replace”?
- Proposed rule could go in several different directions
- EPA may rescind based on legal argument advocated by challengers (“beyond the fenceline”)
- Litigation: standard of review for changes in position
- Practical effect of withdrawing CPP is unclear
 - investments in new coal-fired power plants determined by energy prices
 - utilities continue to build new capacity using natural gas, wind, and solar, depending on the relative economics of these sources
 - capital cost of wind and solar is dropping; methods to resolve the intermittency of wind and solar are improving
 - in the shorter term, coal may be dispatched more than it would have
 - but companies may be hesitant to rely on the current administration’s positions in making long-term investments

Paris Climate Accord



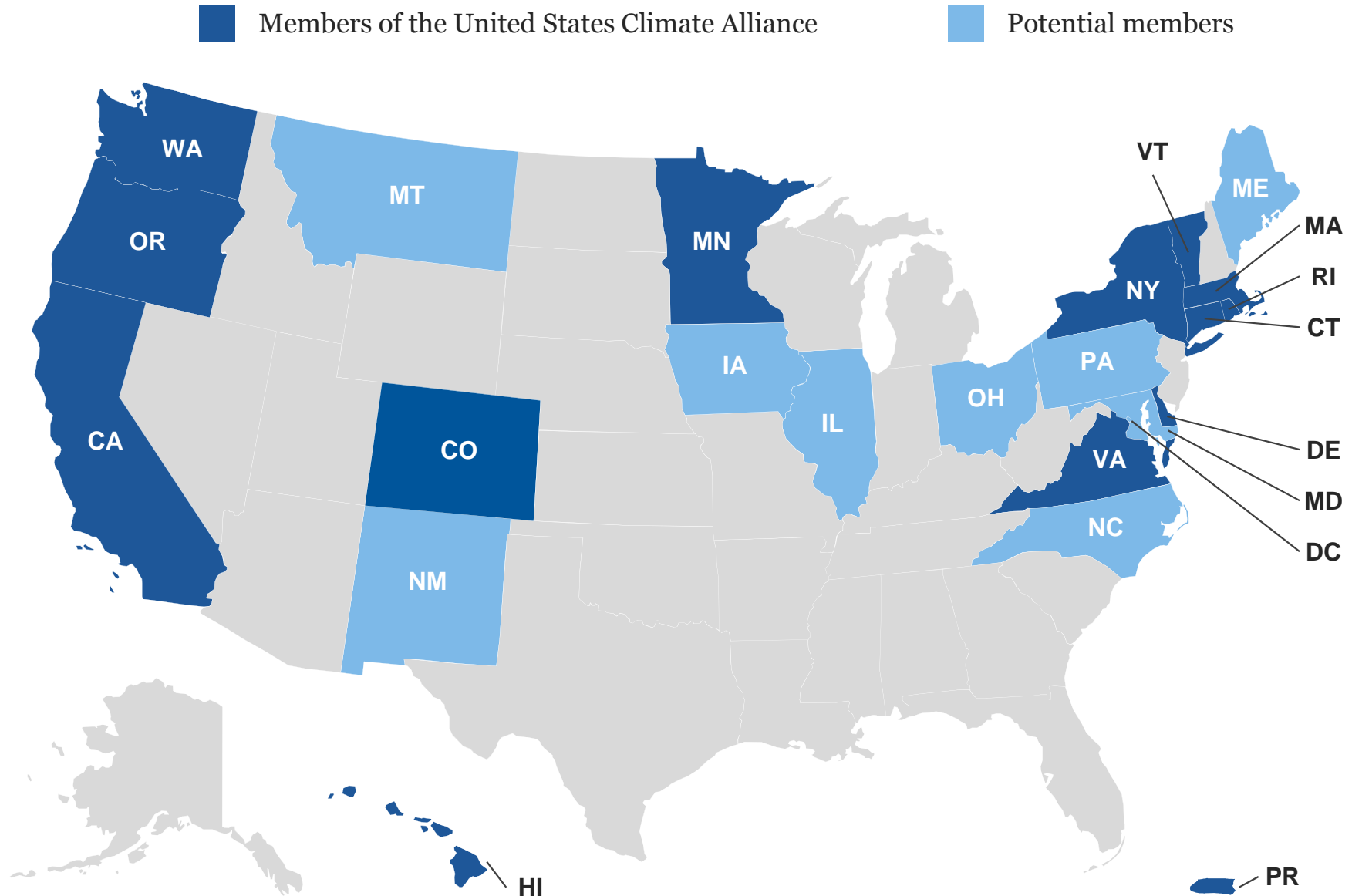
PARIS2015
UN CLIMATE CHANGE CONFERENCE
COP21·CMP11



**“Trump announces U.S. will exit
Paris climate, deal, sparking
criticism at home and abroad”**

-- The Washington Post, June 1, 2017

U.S. States Vowing to Uphold Paris Agreement



Paris: What You Need to Know

1. Withdrawal not effective until **Nov. 2020** at earliest
2. U.S. obligations won't be enforceable in the meantime
3. U.S. remains in UN Framework Convention (UNFCCC)
4. Unlikely to affect transition to cleaner energy
5. Other countries poised to fill leadership vacuum
6. U.S. access to global markets could be affected
7. State and local jurisdictions are stepping into the breach
8. Businesses will continue to assert leadership
9. Increasingly unlikely U.S. will meet its 2025 target, with consequences for agreement as a whole
10. Climate litigation continues apace = risk multiplier

Other Clean Air Act Regulations



EPA Methane Regulations

- May 2016: Final rule
- First CH₄ standards for new/modified/reconstructed oil & gas sources
 - Goal to reduce methane emissions by 40-45% (from 2012 levels) by 2025; also sets standards for volatile organic compounds (VOCs) and other air pollutants
- Mar. 2017: EPA drops information request for existing sources
- Apr. 19: EPA announces intent to reconsider
- May 31: EPA issues 90-day stay of compliance deadlines
- June 5: NGOs challenge stay
- [June 13: meanwhile, EPA proposes 2-year delay of key provisions in rule]
- June 20: 13 States, DC, and Chicago intervene to support NGOs
- July 3: Court vacates EPA's 90-day stay as arbitrary and capricious
- Aug 10: Court votes 8-3 to deny petitions by states and industry groups for rehearing en banc – EPA does not petition
- => Mandate issues – compliance deadlines, dilemmas

EPA: Ozone and Mercury/Air Toxics

- 2015 Ozone Standard (NAAQS)
 - EPA weighing whether to reconsider pursuant to Energy E.O.
 - DC Circuit grants abeyance
 - EPA originally extends, then withdraws, deadlines for states to designate attainment/non-attainment
 - Deadline for EPA to promulgate initial designations is Oct. 1, 2017
- Mercury and Air Toxics Standard (MATS)
 - EPA weighing whether to reconsider 2016 supplemental finding that regulating power plants is “necessary and appropriate”
 - On remand from 2015 SCT decision requiring agency to consider costs
 - DC Circuit grants abeyance
 - Compliance largely achieved

Regulatory Reform Initiatives



Regulatory Reform E.O.'s

- **E.O. 13771 (Jan. 2017) - Reducing Regulation and Controlling Regulatory Costs**
 - “2 for 1” Requirement: 2 regulations must be rescinded for every 1 promulgated
 - DC district court hears facial challenge brought by NGO's
- **E.O. 13777 (Feb. 2017) - Enforcing the Regulatory Reform Agenda**
 - EPA: Administrator Pruitt establishes Regulatory Reform Task Force
 - April – May: public comment and public meetings (60,000 comments)
 - Similar processes at other agencies, including DOI, DOE

Infrastructure: Streamlining Permitting



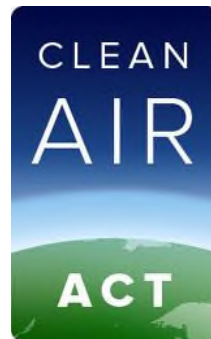
Wide-Ranging Environmental Issues



NEPA



CWA
§ 404/401



CAA
e.g., methane rules



ESA



MBTA



BGEPA



FERC



PHMSA



NHPA



Tribal Lands/Treaties

Recent Cases in the News: Sample Headlines

1. Tribal landowners challenge **natural gas pipeline** on their property
2. Top Trump adviser calls for reviving controversial **natural gas** project on Oregon's coast
3. DC Circ. Grills FERC Over \$3.5B Florida **Natural Gas Pipeline**
4. Court rejects "ill-informed" BLM approval of Oregon **wind** project
5. NEPA fight brewing over renewables (**hydro**) project authorized by BLM
6. Sierra Club demands agency review of Virginia **natural gas** pipeline deal
7. Green groups lose bid to head off **oil exploration** near Everglades
8. **Wind farm** and utility petitioned for review of orders of the FERC
9. U.S. blocks major **oil pipeline** after 18 leaks and 2 mill. gal. spill of drilling mud
10. Maryland Approves credits for large **offshore wind** projects
11. DOE Stands Behind Approval of Max La. **Gas Exports**
12. Enviros launch new opposition to Pennsylvania **Gas Pipeline**

Infrastructure E.O.'s

- **E.O. 13766 (Jan. 2017): Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects**
 - Requires CEQ to establish expedited procedures for environmental reviews and approvals of "high-priority" infrastructure projects
- **E.O. 13805 (July 2017) - Establishing a Presidential Advisory Council on Infrastructure (Dep't Commerce)**
 - Disbanded
- **E.O. 13807 (Aug. 2017): Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects**
 - Builds on tools championed by previous administration in Title 41 of Fixing America's Surface Transportation Act (Fast-41)
 - Federal Permitting Improvement Steering Council
 - Infrastructure Dashboard
 - Expedited timeframes
 - One Federal Decision
 - Tools to drive agency incentives, transparency and accountability

One Last Example: Superfund Task Force

- In May 2017, creation of EPA Superfund Task Force was announced
- Charged with providing recommendations on how to streamline and improve the Superfund program
- On July 25, 2017, the Task Force issued its report and recommendations:
 - Expedite cleanup and remediation of complex or highly contaminated sites
 - Re-invigorate responsible party cleanup and reuse
 - Expand private sector involvement in cleanups
 - Promote redevelopment and community relations
 - Engage partners and stakeholders

For More Information...



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9 Things to Know About Trump's Paris Agreement Decision

<https://www.apks.com/en/perspectives/publications/2017/06/9-things-to-know-about-trumps-paris-agreement>

Trump's Environmental Agenda: The 1st 100 Days

<https://www.apks.com/en/perspectives/publications/2017/04/trumps-environmental-agenda-the-1st-100-days>

10 Key Revisions to EPA's Final TSCA Inventory Reset Rule: Trump Administration Provides Some Regulatory Relief

<https://www.apks.com/en/perspectives/publications/2017/06/10-key-revisions-to-epas-final-tsca-inventory>

Getting Down to Business: EPA's Superfund Task Force Report Seeks to Streamline and Rejuvenate the Program

<https://www.apks.com/en/perspectives/publications/2017/07/superfund-task-force-report-reflects>

President Trump Takes His Turn at Expediting Environmental Reviews and Permitting of Infrastructure Projects

<https://www.apks.com/en/perspectives/publications/2017/08/president-trump-takes-his-turn-at-expediting>