

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



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This is the second in a series of Administrative Watch alerts to assist in understanding the significant regulatory actions arising out of the Trump administration, and the effect of legal challenges to those actions by environmental groups.

Trump Executive Order Withdraws Obama Administration Actions on Climate Change and Requires Review of Regulations Affecting Energy Sector

On March 28, 2017, President Donald Trump signed an Executive Order entitled “Promoting Energy Independence and Economic Growth,” with the stated policy of “promot[ing] clean and safe development” of domestic energy resources and ensuring an affordable and reliable supply of electricity, while “avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.” Although the Executive Order does not itself withdraw any rules issued by the U.S. Environmental Protection Agency (EPA) or other agencies, it clearly reflects President Trump’s intent to drastically change course from the Obama administration’s stance on climate change and to seek reducing environmental regulation of, among other sources of greenhouse gases, coal-fired power plants and oil and natural gas operations.

This Executive Order revokes existing Executive Order 13653, signed by President Barack Obama on November 1, 2013, which expressly recognized the existence of and potential impacts from climate change and directed interagency efforts to prepare for such impacts. The Executive Order signed by President Trump also revokes and rescinds several presidential memoranda and executive reports, including but not limited to:

- **The President’s Climate Action Plan** (June 2013), which, among other things, identified Obama administration priorities and laid the groundwork for measures to reduce carbon dioxide emissions from power plants, reduce methane emissions from oil and gas operations and other industries, and increase investment in renewable energy sources; and
- **Presidential Memorandum on Power Sector Carbon Pollution Standards** (June 2013), which directed EPA to develop and publish proposed rules to establish carbon dioxide emissions standards for existing, new, modified and reconstructed power plants.

In addition to revoking these documents, the Executive Order also disbands the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) and withdraws a series of technical support documents released by the IWG. These technical support documents provided guidance to agencies on monetizing overall damage to human health, property, and agriculture specifically associated with incremental increases in carbon dioxide, nitrous oxide, and methane emissions as

part of cost-benefit analyses used to justify new regulations.

Pursuant to the Executive Order, agency heads have 45 days to develop and submit to the Office of Management and Budget (OMB) a plan for reviewing all agency regulations, orders, guidance documents, policies or other actions that “potentially burden the development or use of domestically produced energy resources, with particular attention to the “siting, permitting, production, utilization, transmission, or delivery” of “oil, natural gas, coal, and nuclear energy resources.” By late July 2017, each agency must submit a draft final report to various executive officers to provide recommendations for eliminating what it may deem as burdens on domestic energy production, development, or use. Such recommendations are to be finalized within 180 days of the Executive Order, unless the deadline is extended by OMB.

Certain regulations previously promulgated by EPA, including the controversial Clean Power Plan, are subject to expedited review under the Executive Order. The Clean Power Plan rulemaking finalized in 2015 required the development and submittal of state plans to achieve state-by-state goals for reducing carbon dioxide emissions from existing power plants. A related rulemaking imposed carbon dioxide emission standards for new, modified and reconstructed power plants. In 2016, EPA finalized New Source Performance Standards (NSPS) for the oil and natural gas industry to reduce methane emissions and further implement President Obama’s Climate Action Plan. Under the Executive Order, the EPA Administrator is required to review these rules and any associated guidance or memoranda for consistency with the Order’s stated policies, and, “if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising or rescinding those [existing] rules.”

Although the Executive Order appears to pave the way for withdrawal or revision of the Clean Power Plan and other rules affecting the energy sector, the practical impact of the Executive Order remains to be seen. Many power generation facilities have already begun or otherwise completed a transition to alternative fuels carrying less stringent regulatory requirements as compared to coal. This transition continued notwithstanding the stay of the Clean Power Plan by the U.S. Supreme Court in early 2016, suggesting that the Executive Order may slow, but not necessarily halt such transformation. Likewise, many oil and gas operators have already implemented measures to comply with the 2016 NSPS rule. Any future efforts by President Trump to rescind or even revise Obama era rules will likely involve a lengthy process of formal notice and comment, as well as litigation that will inevitably be filed by states and/or environmental organizations seeking to block or otherwise prevent such agency actions from taking effect. Another consideration is that state regulations and programs regarding the energy industry and climate change are likely to continue notwithstanding the Executive Order.

Babst Calland will be tracking the impact of the Executive Order and subsequent actions taken by the Trump administration and state agencies with respect to the energy sector. If you have any questions regarding the Executive Order or environmental laws pertaining to climate change and the energy sector, please contact Michael H. Winek at (412) 394-6538 or mwinek@babstcalland.com, Varun Shekhar at (412) 394-5679 or vshekhar@babstcalland.com, or Meredith Odato Graham at (412) 773-8712 or mgraham@babstcalland.com.