

Trump Signs Executive Order Targeting EPA's Climate Change Policies

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On March 28, 2017, **President Trump** signed an executive order that directed the **U.S. Environmental Protection Agency (EPA)** to immediately take steps to withdraw and revise the Obama administration's Clean Power Plan, remove limits on federal leasing for coal production, and lift other restrictions on domestic energy production.

While President Trump's statement was brief on the substance of the order, EPA now faces a complicated process for repealing the Clean Power Plan. The Clean Power Plan requires significant reductions of greenhouse gases (GHG) from power plants, the largest emissions source for carbon dioxide. In 2007, the Supreme Court held that EPA can regulate carbon dioxide and other GHGs under the Clean Air Act, if EPA first determined that those emission endangered human health and the environment. EPA issued that so-called endangerment finding in 2009 for cars and vehicles, and has since expanded that to power plants and airplanes. EPA arguably now has a duty to regulate GHGs.

The Court did not direct EPA on *how* to regulate GHGs and that is likely where the EPA, under Administrator Pruitt, will seek to undo the Clean Power Plan, perhaps by scaling back the scope of the current regulation – the implementation of which has been stayed pending judicial review.

Administrator Pruitt needs help implementing such an aggressive agenda and we should anticipate the announcement of his Deputy Administrator, Chief of Staff, General Counsel, and Regional Administrators. Historically, these appointments have taken a relative long time to finalize. Since 1980, EPA Deputy Administrators have been nominated 104 days and confirmed 158 days after inauguration. Since 2000, Regional Administrators have been announced, on average, 335 days after inauguration. Pruitt is the former Oklahoma Attorney General, as such it is expected that he will appoint others from Oklahoma to key staff positions.

For their part, EPA staff have expressed concern with the direction of EPA under the Trump Administration. Region 5 staff protested the anticipated changes before they were announced. A small group of EPA employees were reported to have created new email addresses, acquired encrypted phones, and begun using encrypted messaging services to fight the Trump

Administration's agenda while avoiding detection. *Federal Workers Turn to Encryption to Thwart Trump*, Politico (Feb 1, 2017). There is also a Twitter feed purportedly by "100% EPA Staff," @RogueEPASTaff.

Donations to Environmental Non-Governmental Organizations (ENGOS) have reached historic levels since the election and these groups are anticipated to aggressively fight the Trump EPA. This will include public relations campaigns, which has resulted in Pruitt receiving a 24 hour a day, seven days a week security detail. ENGOS will also challenge regulations and other policies advanced by the administration, as well as sue the administration if it fails to undertake regulatory action required under federal environmental statutes. Finally, and perhaps most important to industry, there will be a likely increase in citizen suit enforcement.

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