

## Energy Policy In The Trump Era: Part 2

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Law360, New York (December 2, 2016, 5:25 PM EST) -- Presidential elections matter.

President-elect Donald Trump has pledged to drastically change the federal government's role and policies in relation to energy, the environment and climate change. Reducing regulation was a hallmark of the Trump campaign and serves as a unifying tenet of the new administration taking shape.

In the first installment of this article, we examined the outlook for energy infrastructure, natural gas, coal and oil under the incoming administration.

We also looked at likely policy developments in the area of clean and renewable energy technologies.

In this installment, we will consider the impact on the energy sector of the Trump administration's attitudes towards the Clean Power Plan, the Paris Agreement and other energy and environmental regulations and policies established under President Obama.

### Environment and Climate Change

During the campaign, President-elect Trump called climate change a "hoax" and stated that the concept of global warming was created by and for the Chinese to make U.S. manufacturing non-competitive.

Trump also declared his plans to scrap the Obama administration's Climate Action Plan, including its most prominent component, the Clean Power Plan (CPP), which restricts greenhouse gas (GHG) emissions from existing power plants.

Trump tapped renowned climate skeptic Myron Ebell — director of the Center for Energy and Environment at the Competitive Enterprise Institute — to lead the transition at EPA, further signaling that the agency likely will attempt to roll back a host of air and water regulations developed and implemented by the Obama administration.



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The Trump transition website states that it will refocus the EPA on its core mission of ensuring clean air, and clean, safe drinking water for all Americans.

### ***Clean Power Plan***

There are several possible courses of action that could be pursued to revoke or limit the impact of the CPP (currently stayed by the Supreme Court), but the path forward depends in part on when and how the D.C. Circuit rules on the myriad legal challenges to the rule.

Some have suggested that the new administration could, immediately upon taking office, “moot” the case by informing the D.C. Circuit that it intends to withdraw the CPP. However, because the CPP is a regulation, it could not be withdrawn in advance of a formal notice and comment rulemaking process as required by the Administrative Procedure Act.

Thus, unless the D.C. Circuit declares the CPP unlawful and the Supreme Court agrees or is not in a position to act, revocation of the CPP is not expected to happen quickly and will likely require significant new regulatory proceedings.

Likewise, it is not apparent that a decision by the new administration not to defend the CPP before the D.C. Circuit would result in dismissal of the case, because numerous parties that intervened to defend it may be able to continue the appeal, unless and until the CPP is formally withdrawn.

### ***Other Key Regulations***

Comparable complications and impediments stand in the way of eliminating or substantially scaling back implementation and enforcement of other regulatory programs.

Unwinding the EPA’s New Source Rule setting forth GHG emissions standards for new power plants would likely require formal rulemaking. The EPA’s requirement for reduced methane emissions from certain oil and gas infrastructure, the Department of Interior (DOI) rule restricting hydraulic fracturing on federal lands (also current stayed), and the DOI’s newest rule (promulgated post-election) to reduce waste of natural gas from venting, flaring and leaks during oil and natural gas production activities on onshore federal and certain Indian leases, are among the rules likely to be targets.

Certain regulations that were only promulgated very recently may be disapproved, or essentially revoked, by Congress pursuant to the Congressional Review Act, but that authority has rarely been invoked, for a number of reasons.

### ***The Paris Agreement***

During the campaign, President-elect Trump promised to cancel the Paris Agreement on climate change, which now is in force. He also vowed not to make payments to the United Nations’ global climate change fund.

It has been reported that Trump recently responded to a question about whether he would withdraw the United States from the agreement by stating that “he has an open mind to it.”

Withdrawal from the Paris Agreement by the United States could be accomplished by invoking an article to withdraw a year after it takes effect by declaring the abandonment of a 1992 treaty, the United Nations Framework Convention on Climate Change, on which it is partly built.

Another section of the agreement allows a signatory to withdraw three years after it is signed, with an additional one-year waiting period. President Trump could choose not to enforce voluntary rules (such as the CPP) and incentives to reduce GHG emissions.

On the climate change front, there has been, and continues to be, significant pushback on the president-elect's position from a host of nations. China has repeatedly declared its intent to lead in this area if the U.S. does not, as it faces growing domestic pressure to reduce its air pollution.

There may be significant foreign policy implications for the United States if President Trump decides to walk away from the Paris Agreement. Hundreds of companies recently announced a commitment to continue reducing GHG emissions, and environmental groups and others are massing their forces and making plans to challenge anticipated Trump administration actions on climate change.

In addition to the potential legal impediments to swift action to undo such regulations, many utilities, energy companies and market participants, as well as the products and services companies that sell to them, have helped shape or benefitted from clean energy regulations, policies and initiatives.

Unwinding those regulations, policies and initiatives would be disruptive and harm economic interests and investments that many began implementing years ago. Thus, many large companies are likely to oppose such efforts.

In sum, on the environment and climate change, if Trump's pronouncements are translated into policies and action by the Trump administration, we expect vigorous political fights and legal battles to ensue, with possible uncertainty for investors, market participants and others.

Thus, it seems likely that the timing and extent of changes to environmental and climate change requirements and policies will remain up in the air for some time.

## **Conclusion**

At this point, many things are fuzzy and not expected to sharpen into focus quickly.

The impact of Donald Trump's election as president on federal requirements and policies on energy, environment and climate change is unclear. It is reasonable to predict there will be contentious fights on multiple fronts in many venues.

In the energy sector, infrastructure is expected to get a boost and the future of natural gas continues to look strong. As to the role of coal, renewable generation and clean energy and technology, the Trump administration is expected to have less influence as it cannot easily upend market forces or dictate state laws and policies.

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