

## Trump Energy, Enviro Cuts Will Raise Eyebrows In Congress

By **Keith Goldberg**

*Law360, New York (May 23, 2017, 9:48 PM EDT)* -- The energy and environmental portions of the 2018 budget proposal President Donald Trump released Tuesday largely stick to the blueprint his administration laid out in March, calling for steep funding cuts to the U.S. Environmental Protection Agency, as well as climate change and clean energy initiatives.

But experts say Trump's push to slash funding for broadly popular programs such as EPA state grants and U.S. Department of Energy research and development efforts are in for a frosty reception on Capitol Hill.

"This budget is going to face a great deal of [congressional] friction, or it's just going to slide [ignored] right off the desks of the appropriations committees," said Ali Zaidi, a former Obama White House climate change official who is now a senior energy and climate adviser at Morrison & Foerster LLP.

Here are several energy and environmental proposals that will likely face significant congressional pushback.

### **Cuts in EPA State Grants**

The EPA faces a 31 percent budget cut under Trump's proposal that would leave the agency at its lowest funding level since 1990. Funding for climate change initiatives like the Clean Power Plan are all but eliminated and scientific research and enforcement also take major funding hits.

But it's the drastic reductions in state aid that could be the most difficult to get through Congress, experts say. Cuts include a \$482 million reduction in "categorical grants," which provide money to states to implement various water, air, waste, pesticides and toxic substances programs, for a total budget of \$597 million in 2018.

"On the one hand, you're seeing the administration making the arguments about federalism and encouraging state development and enforcement of environmental policy, and on the other hand, they're underfunding the programs the states need," Zaidi said. "There will be pushback there."

Environmental advocates say the cuts will undermine the cooperative federalism envisioned in laws like the Clean Air Act, as well as the ability of states and local municipalities to comply with federal environmental mandates. That leaves them vulnerable to not only to statutory penalties but litigation as well.

“Our responsibilities under the Clean Air Act don’t go away,” said Bill Becker, executive director of the National Association of Clean Air Agencies, an umbrella group of state and local air regulators. “We will get sanctioned for failure to complete these responsibilities. Those sanctions are harsh and mandatory.”

A drastic reduction in EPA grants could also impair the ability of states to issue federally mandated permits, which could pinch industry in the form of higher permitting fees and longer permitting delays, according to Venable LLP environmental partner Bill Sloan.

“The budget itself doesn’t target permitting programs, but what it does do is significantly slash the budget of the agency and takes away the funding that goes to the state governments that administer these environmental statutes,” Sloan said. “It’s taking a fairly blunt approach.”

### **Cuts in Energy Development Efforts**

While the proposed \$28 billion budget for the DOE is just a 5.6 percent decrease from 2017 congressionally funded levels, the agency’s research and development arms are shouldering the bulk of the cuts, and those are areas that enjoy significant bipartisan support.

The proposal eliminates the DOE’s Advanced Research Projects Agency-Energy program, known as ARPA-E, which provides research and development funding and other support for clean energy technologies. Also getting the ax are a loan guarantee program for innovative technology and an advanced vehicle technology manufacturing program.

The proposal also restricts the funding of the DOE’s Office of Energy Efficiency and Renewable Energy, the Office of Nuclear Energy, the Office of Electricity Delivery and Energy Reliability, and the Fossil Energy Research and Development program to early-stage, applied energy research.

Congressional Democrats will likely froth at the mouth over the EERE shouldering the bulk of the \$2.1 billion proposed funding cut — that office’s budget is slashed by a whopping 70 percent. But the cuts to the other offices, as well as a \$900 million funding cut to the Office of Science, which oversees 10 of the DOE’s 17 national laboratories, will inspire teeth-gnashing on both sides of the aisle, experts say.

“Trump basically ran on fossil energy and is winning in areas that were coal areas,” said K&L Gates LLP partner Tim Peckinpaugh, who manages the firm’s political action committee. “Politically, it’s a nonstarter on Capitol Hill, I can’t imagine that’s going to survive.”

Sen. Maria Cantwell, D-Wash., the ranking minority member of the Senate energy committee, on Tuesday pronounced the proposal “dead on arrival” in Congress, while several Republican colleagues have voiced similar skepticism.

“We cannot lose the technological advantages we have gained through our country’s investment in research and development,” a group of five GOP senators, including energy committee chair Lisa Murkowski of Alaska, wrote in a letter to Trump last week.

### **Cuts in EPA Cleanup Funding**

While environmental regulation may have become a partisan issue in Congress, environmental cleanup still enjoys bipartisan support — which is why many lawmakers may cast a skeptical eye toward Trump’s bid to

reduce the EPA's contribution to regional and Superfund cleanup efforts, experts say.

The proposed budget cuts \$330 million from the EPA's Hazardous Substance Superfund Account, leaving it with \$762 million. It also eliminates funding for specific regional efforts such as the Great Lakes Restoration Initiative, the Chesapeake Bay and other geographic programs — a reduction of \$427 million.

"EPA has a legal role to administer every Superfund site," said John Walke of the Natural Resources Defense Council. "A 30 percent cut is going to have a ripple effect and increase cleanup costs."

Meanwhile, Sens. Debbie Stabenow, D-Mich., and Rob Portman, R-Ohio, said Tuesday that they will fight any effort to reduce or eliminate funding for the Great Lakes Initiative.

"It's a situation where the federal government, in the eyes of these senators, has made a promise to [help improve] this environmental problem, and they're going to fight tooth and nail to make sure that promise is kept," said Holland & Knight LLP senior policy adviser Ben Dunham, a former senior adviser to the late Sen. Frank Lautenberg, D-N.J.

### **Erasing Offshore Leasing Revenues for Gulf States**

With proposals to open the Arctic National Wildlife Refuge to oil and gas drilling and sell off half of the Strategic Petroleum Reserve, Trump's budget has an eye on further oil and gas development, a goal shared by Republicans that control Congress. But one proposal could spark some intraparty resistance: eliminating the cut of federal offshore leasing revenues that Texas, Louisiana, Mississippi and Alabama receive under the Gulf of Mexico Energy Security Act of 2006.

Coastal restoration groups have blasted the proposal, and Sen. Bill Cassidy, R-La., who has pushed to give Gulf states an even bigger cut of offshore leasing revenues, calls the issue a nonstarter.

"Any cuts to coastal restoration efforts or GOMESA are short-sighted," Cassidy said in a statement Tuesday. "As the committee process moves forward, I will not only oppose cuts to the revenue sharing program but continue to work to expand it for the Gulf Coast."

Getting a piece of offshore revenues are an incentive for Gulf states to encourage further production and related onshore development, experts say. A proposal to cut those states off might have a tough time getting past lawmakers like Sens. Thad Cochran, R-Miss., who chairs the Senate Appropriations Committee, and Richard Shelby, R-Ala., a senior member of the committee.

"They're the ones that hold the pen on what the appropriations bill looks like," Dunham said.

--Additional reporting by Juan Carlos Rodriguez. Editing by Katherine Rautenberg and Brian Baresch.