



2017 Federal Environmental Update

**David Montgomery
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November 16, 2017



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EPA Region 4 (Atlanta), EPA Headquarters (Washington, D.C.), EPA Region 2 (New York); Seventeen Years Private Practice (Amlaw 200 firms)

Chemical Manufacturers, Pulp and Paper, Power/Utilities, Railroads/Transportation

Major litigation – Everglades Water Quality, CERCLA/Superfund, Safe Drinking Water Act, Combined Sewers

International Joint Commission, Speaker of the House of Representatives, U.S. Attorneys, Governors



Secretary of Energy
Rick Perry

Secretary of Interior
Ryan Zinke

EPA Administrator
Scott Pruitt

“We can simultaneously pursue the mutual goals of environmental protection and economic growth. But that can only happen if EPA listens—listens to the views of all interested stakeholders, including the States, so that it can determine how to realize its mission while considering the pragmatic impacts of its decisions on jobs, communities, and most importantly, families.”

EPA Administrator Scott Pruitt Senate Confirmation Hearing Opening Statement
January 18, 2017



October 26, 2017 WASHINGTON -

Yesterday, President Donald J. Trump announced his intent to nominate Matt Leopold to serve as general counsel for the U.S. Environmental Protection Agency. Mr. Leopold previously served as general counsel for Florida Department of Environmental Protection from March 2013 to February 2015 and as an attorney for the United States Department of Justice Environment and Natural Resources Division from January 2007 to February 2013. He is currently of counsel for Carlton Fields Jordan Burt, P.A. focusing on environment, energy, water law, and litigation.



MEET THE ACTING ASSISTANT ATTORNEY GENERAL

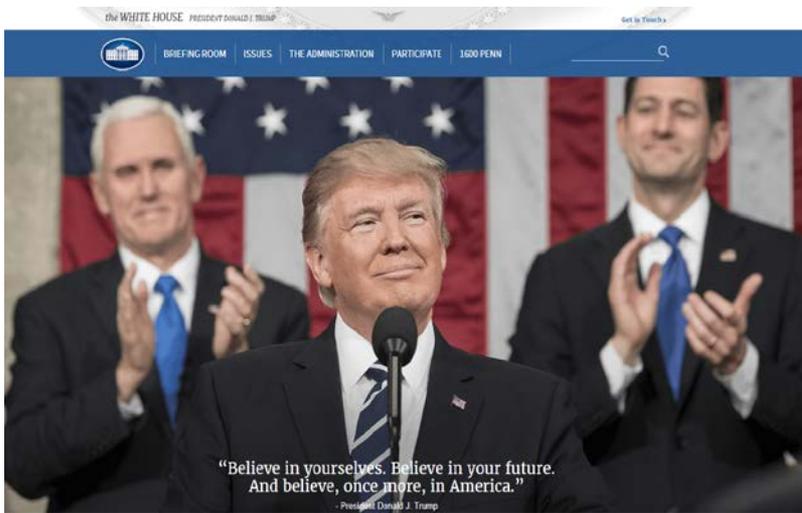


Jeffrey H. Wood

Acting Assistant Attorney General, Jeffrey H. Wood

Jeffrey H. Wood began serving as Acting Assistant Attorney General of the Environment and Natural Resources Division (ENRD) on January 20, 2017. He previously served as environmental counsel for U.S. Senator Jeff Sessions and as the Republican staff director for the U.S. Senate Subcommittees on Clean Air & Nuclear Safety and Water & Wildlife. In addition to his government service, Jeff's career has

included time as a partner in the environmental and energy practice groups of a private law firm and as in-house counsel for a transportation company. He earned his undergraduate and law degrees from Florida State University.



Executive Order on January 24, 2017

Executive Order Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects

Executive Order on January 30, 2017

Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs

Executive Order on February 24, 2017

Presidential Executive Order on Enforcing the Regulatory Reform Agenda

Executive Order on February 28, 2017

Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule

Executive Order on March 28, 2017

Presidential Executive Order on Promoting Energy Independence and Economic Growth

January 24, 2017

Presidential Memorandum

“Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing”



January 24, 2017

Presidential Memorandum “Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing”

Establishes Secretary of Commerce plan to streamline Federal permitting processes for domestic manufacturing and to reduce regulatory burdens affecting domestic manufacturers

- 20 sets of regulations and permitting reform issues from the respondents as being a top priority for immediate consideration
- **Regulatory Reform Taskforce (RRTF) and Action Plan for Each Agency including EPA**



STREAMLINING PERMITTING AND
REDUCING REGULATORY BURDENS FOR
DOMESTIC MANUFACTURING

U.S. Department of Commerce
October 6, 2017



Table 1. Examples of Key Issues that Were Identified by Respondents

Category	Problem	Examples from RFI Responses
Inadequate Rule Design	A regulation is written or implemented with a lack of "on the ground" knowledge about how the regulated industry operates, ⁹ is economically or technologically infeasible, or is based on unrealistic data or assumptions	National Ambient Air Quality Standards (NAAQS) — unrealistic assumptions on background levels; Crystalline Silica Exposure Standard
	There is a lack of clarity around the requirements needed to comply with the regulation	Clean Water Act (CWA) — Definition of Waters of the United States
	The regulation is inflexible or too prescriptive; overly strict interpretations of policy and guidance	New Source Review (NSR) Permitting Process — inflexibility in allowing for aggregation of emissions within a plant
	Overlap or duplication of rules	New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) — overlap
	A better regulatory approach exists to achieve the objectives or the approach actually undermines key regulatory objectives	Resource Conservation and Recovery Act (RCRA) — inappropriate classification of certain waste streams as hazardous, which has perverse effect of discouraging recycling of this waste
	The regulation is outdated	Leak Detection and Repair Rules — outdated monitoring technology options
	Regulatory over-reach — goes beyond statute or rulemaking	New Source Performance Standards (NSPS) — enforcement beyond rules
	Complex, onerous, inefficient and lengthy processes, particularly permitting processes	New Source Review (NSR) Permitting Process
	Uncertainty, particularly permitting processes	Section 404 Wetlands Permitting Process (wide variation in duration)



Regulatory Reform Task Force (RRTF)

U.S. Environmental Protection Agency

Final Report on Review of Agency Actions that Potentially Burden
the Safe, Efficient Development of Domestic Energy Resources
Under Executive Order 13783



- (1) Comprehensive New Source Review reform
- (2) National Ambient Air Quality Standards (NAAQS) reform – ozone, nitrogen dioxide
- (3) Robust evaluations of the employment effects of EPA regulations, and
- (4) Sector-based outreach program



FEDERAL REGISTER

The Daily Journal of the United States Government



March 6, 2017

Waters of the United States

March 22, 2017

CAFE Fuel Standards

October 16, 2017

Clean Power Plan



FEDERAL REGISTER

The Daily Journal of the United States Government

November 9, 2017

Remanufactured Truck “Glider” Kits

September 21, October 11, 2017

National Emission Standards for Hazardous Air Pollutants

Various

State Implementation Plans (CAA), State Program Approvals (CWA, RCRA)





E. SCOTT PRUITT
ADMINISTRATOR



April 18, 2017

Regulatory Reform Task Force

May 22, 2017

Prioritizing the Superfund Program

October 16, 2017

Sue and Settle: “Adhering to the Fundamental Principles of Due Process, Rule of Law, and Cooperative Federalism in Consent Decrees and Settlement Agreements”

October 31, 2017/November 3, 2017

Strengthening Federal Advisory Committees



E. SCOTT PRUITT
ADMINISTRATOR



October 2, 2017

EPA DRAFT FY2017-2022 Strategic Plan

- Goal 1: Core Mission - Deliver real results to provide Americans with clean air, land, and water.
- Goal 2: Cooperative Federalism - Rebalance the power between Washington and the states to create tangible environmental results for the American people
- Goal 3: Rule of Law and Process - Administer the law, as Congress intended, to refocus the Agency on its statutory obligations under the law.



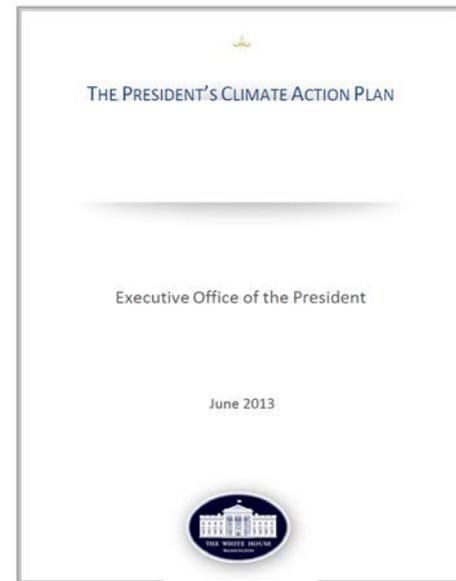
Cases to Follow

West Virginia v. EPA – Clean Power Plan

National Association of Manufacturers v. EPA
– Waters of the United States



Clean Power Plan



Directly

- 30% Reduction in CO2 Emissions – Fossil Fuel
- Coal Plants Infeasible in Many States/Areas
- NGCC – Natural Gas Combined Cycle Dispatch/Deployment
- States Implement Renewable Energy Programs
- State Environmental Agencies* Choose “Winners and Losers”
- Energy Efficiency

Indirectly

- Transmission
- Distribution
- Reliability
- Power Prices
- Regional Development

Best System of Emissions Reduction (BSER)

Measure/"Block"	% CO2 Reduction
<u>Coal Plant Heat Rate Improvements</u> – Reduce carbon intensity by an average of 6%	12%
<u>NGCC: Redispatch</u> from coal-fired power plants to natural gas combined cycle plants - 70% capacity factor.	31%
<u>Renewable and Zero-Emission Power Sources:</u> Preserving 5.8% of existing nuclear capacity, complete new nuclear capacity under construction, and increase renewables to achieve the regional average of renewable portfolio standards.	35-40%
<u>Demand-side and Efficiency Improvements</u> of 1.5% per year.	18%

Goal: 30% CO2 Emission Reduction by 2030

Clean Power Plan (CPP) Stayed



(ORDER LIST: 577 U.S.)

TUESDAY, FEBRUARY 9, 2016

ORDER IN PENDING CASE

15A773 WEST VIRGINIA, ET AL. V EPA, ET AL.

The application for a stay submitted to The Chief Justice and by him referred to the Court is granted. The Environmental Protection Agency's "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64,662 (October 23, 2015), is stayed pending disposition of the applicants' petitions for review in the United States Court of Appeals for the District of Columbia Circuit and disposition of the applicants' petition for a writ of certiorari, if such writ is sought. If a writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for a writ of certiorari, this order shall terminate when the Court enters its judgment.

Justice Ginsburg, Justice Breyer, Justice Sotomayor, and Justice Kagan would deny the application.

Clean Air Act Clean Power Plan Rollback



Executive Order on March 28, 2017

Presidential Executive Order on Promoting Energy Independence and Economic Growth

BILLING CODE 4910-22-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2017-0355; FRL-9970-58-OAR]

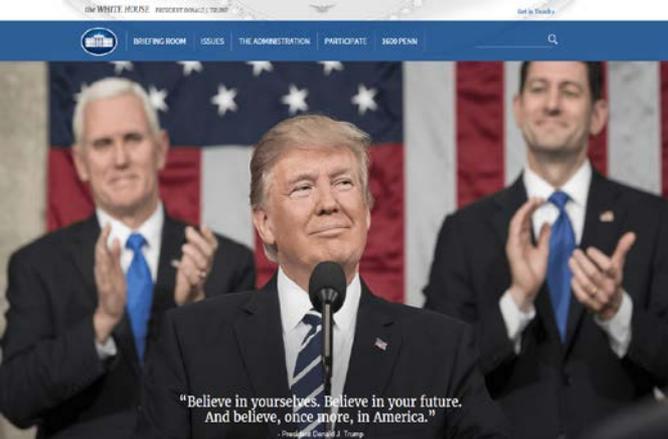
RIN 2060-AT55

Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule; notice of public
hearing and extension of comment
period.

SUMMARY: On October 16, 2017, the
Environmental Protection Agency (EPA)
published a proposal to announce its



Rescinded by Executive Order



- (i) Executive Order 13653 of November 1, 2013 (Preparing the United States for the Impacts of Climate Change);
- (ii) The Presidential Memorandum of June 25, 2013 (Power Sector Carbon Pollution Standards);
- (iii) The Presidential Memorandum of November 3, 2015 (Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment); and
- (iv) The Presidential Memorandum of September 21, 2016 (Climate Change and National Security).
- (v) The Report of the Executive Office of the President of June 2013 (The President's Climate Action Plan); and
- (vi) The Report of the Executive Office of the President of March 2014 (Climate Action Plan Strategy to Reduce Methane Emissions).

Clean Power Plan Timeline

- 2009 Endangerment finding
- October 23, 2015 – Original promulgation of the CPP
- February 9, 2016 –U.S. Supreme Court stay
- March 28, 2017 – Exec Order [Presidential Executive Order on Promoting Energy Independence and Economic Growth](#) directing U.S. EPA to suspend, revise, or rescind various Obama-era regulations intended to regulate GHG emissions from power plants, including, but not limited to, the CPP.
- October 16, 2017 – EPA proposal repeal CPP
- November 8, 2017 – **Extend comment period to Jan. 16, 2018**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

KELSEY CASCADIA ROSE JULIANA,
et al.,

Case No. 6:15-cv-01517-TC
OPINION AND ORDER

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

AIKEN, Judge:¹

Plaintiffs in this civil rights action are a group of young people between the ages of eight and nineteen (“youth plaintiffs”); Earth Guardians, an association of young environmental activists; and

¹ Student externs worked on each stage of the preparation of this opinion, from initial background research to final copyedits. I would be remiss if I did not acknowledge the invaluable contributions of Daniel Bodden (University of Kentucky), Elizabeth Jacklin (University of Oregon School of Law), Ann Richan Metler (Willamette University College of Law), James Mullins (University of Washington School of Law), Jessy R. Nations (University of Washington School of Law), Lydeah Negro (Lewis & Clark Law School), and Eleanor J. Vincent (University of Oregon School of Law.)

In order to evaluate the merits of these arguments, I must first locate the source of plaintiffs’ public trust claims. I conclude plaintiffs’ public trust rights both predated the Constitution and are secured by it. See Gerald Torres & Nathan Bellinger, *The Public Trust: The Law’s DNA*, 4 Wake Forest J. L. & Pol’y 281, 288-94 (2014).



Waters of the US Rule



As EPA tries to regulate water, ranchers, counties push back

Midwestern Democrats also join fight over clean waterway rules that Sen. Klobuchar says are unclear.

By Allison Sherry Star Tribune | MAY 18, 2015 — 10:10PM



Pressure builds against EPA water proposal

[Like](#) [Tweet](#) [Share](#)

Issue Date: June 18, 2014

By Kate Campbell

Proposed changes to the federal Clean Water Act have

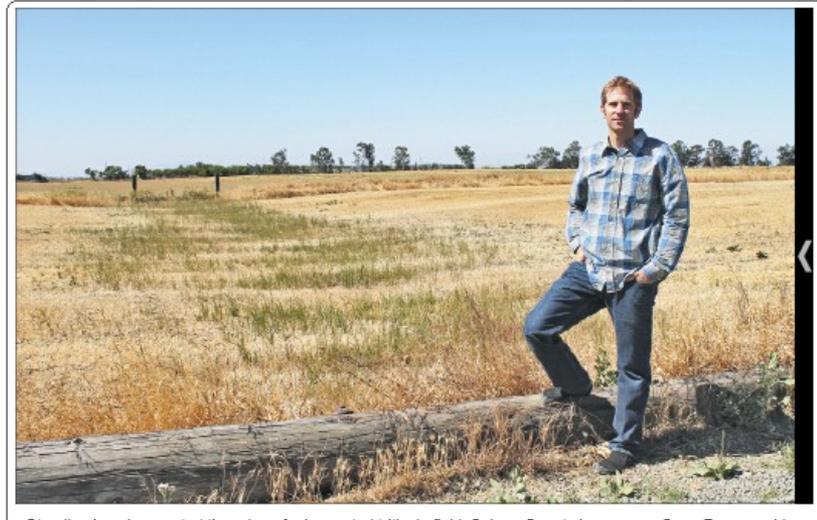


Photo 29. Ephemeral tributary, a concrete flood control channel. Santa Barbara, CA.

An agriculture ditch near Lake Pepin.

WASHINGTON - In the eyes of rural Minnesota, the Environmental Protection Agency rule could be su on 32-year-old Miles Kuschel's cattle ranch in Cass

Most of Kuschel's ditches were created in the 1930s anywhere. They're just pools of standing water in l cattle linger while grazing and take an occasional s



Waters of the US Rollback



Executive Order on February 28, 2017

Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule

“the Administrator and the Assistant Secretary shall consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).”

40742 Federal Register / Vol. 82, No. 165 / Monday, August 28, 2017 / Proposed Rules

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 232, 300, 302, and 401

[EPA-HQ-OW-2017-0480; FRL-9966-99-OW]

Definition of "Waters of the United States"—Schedule of Public Meetings

AGENCY: Department of the Army; and Environmental Protection Agency (EPA).

ACTION: Announcement of public meeting dates.

SUMMARY: The Environmental Protection

will not be formally responding to the recommendations. Follow the online instructions for submitting recommendations. Once submitted, your submission cannot be edited or removed from *Regulations.gov*. The agencies may publish any submission received to the public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ms. Damaris Christensen, Office of Water (4504-T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566-2426; email address: CWAwater@epa.gov; or Ms. Stacy Jensen, Regulatory Community of Practice (CECW-CO-R), U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314; telephone

that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.¹ The comment period for this first step proposed rule is open until September 27, 2017.

For the second step, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that is consistent with the approach outlined in the E.O. In June 2017, the agencies completed consultation processes with tribes as well as state and local governments on the step 2 rulemaking. The meetings described below will provide other interested stakeholders opportunity to provide pre-proposal feedback on this second step rule to revise the definition of "waters of the U.S."

Both EPA and the Corps are aware that the scope of CWA jurisdiction is of intense interest to a broad array of stakeholders and therefore want to provide time for broad pre-proposal

Filing Deadline

November 28, 2017

WOTUS Rule Timeline

- April 21, 2014 – EPA Proposes WOTUS Rule
- August 28, 2015 – EPA Finalizes WOTUS Rule
- October 9, 2015 – 6th Circuit Court of Appeals Stay
- January 13, 2017 – U.S. Supreme Court cert granted
- February 28, 2017 – Trump Administration Executive Order (82 Fed.Reg. 12,497)
- March 6, 2017 – EPA notice rescind rule
- October/November 2017 – EPA Outreach Meetings
- November 28 – Comment to EPA deadline

No.

In the Supreme Court of the United States

NATIONAL ASSOCIATION OF MANUFACTURERS,
Petitioner,
v.
U.S. DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE ARMY CORPS OF ENGINEERS, AND
U.S. ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

**Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI



E. SCOTT PRUITT
ADMINISTRATOR



October 25, 2017

Macy's \$ 250,000 settlement RCRA

October 13, 2017

**\$ 51.5 million Agreement 68th Street
Dump/Industrial Enterprises Superfund Site in
Baltimore County, Maryland**

October 5, 2017

**Heritage Environmental Services, LLC \$77,385
civil penalty + school upgrades to water
fountains, lead filters, PCB free lighting**



October 31, 2017

**\$ 2.5 million penalty PDC Energy, Inc.
(Colorado) VOC Emissions**

October 31, 2017

**\$ 300 million emission control Exxon
Mobil (Louisiana, Texas)**

October 18, 2017

**Guilty Plea, RCRA Hazardous Waste,
Venore, Tennessee**



PERSPECTIVES

on Georgia's Environment

A Publication of the Environmental Law Section of the State Bar of Georgia

Summer 2017

The New EPA

http://www.sgrlaw.com/wp-content/uploads/2017/06/Summer_ELS_17.pdf

David Montgomery Moore¹

The incoming administration of President Donald Trump will preside over the 50th anniversary of the U.S. Environmental Protection Agency (EPA). During the preceding five decades, the EPA has made great progress (and been largely successful by international comparison) in providing and ensuring clean air, water, and land, and protecting citizens, public health, and the environment. Despite these successes, the EPA faces perhaps the most significant and sweeping changes in its history if current events are any guide.

Rulemakings, budget requests, and executive branch actions provide insight into what this "New EPA" will look like. The following is a brief glance at the expected changes and direction at EPA, and ideas on how environmental law practitioners can best adjust to the change.

Appointments

Political appointments are underway. Undoubtedly the most important, and most indicative of the New EPA's future direction, is that of former Oklahoma Attorney General Scott Pruitt to serve as the EPA's 14th Administrator. As Oklahoma Attorney General,

News reports also suggest that the Trump Administration is considering consolidating EPA's 10 regions to 8 as both a cost saving measure and to reflect a Federalist policy of state-led permitting and enforcement. Indeed, the appointments to date signal a move toward greater state autonomy and the integration of EPA with larger federal governmental policy directives. They also highlight what will surely be an increased emphasis on coordination with Congress, and other federal agencies such as Office of Management and Budget, the Council on Environmental Quality, as well as the Interior, Defense, and Commerce departments.

Budget

Early reports of a budget cut of up to 31 percent for EPA's Fiscal Year 2017 (FY17) budget⁶ have not materialized, with Congress returning the majority of EPA's FY16 budgetary funding through a Continuing Resolution approved in early May. Specific funding decisions by the White House and EPA, however, do lend insight into the Trump Administration's priorities.

The Administration released the 'America First' budget in February 2017 which called for decreases in EPA's budget, specifically



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