





---

 DAILY NEWS
 

---

## Pruitt At EPA Helm Not Expected To Immediately Target GHG Risk Finding

December 15, 2016

Oklahoma Attorney General Scott Pruitt (R) -- an ardent critic of EPA and its climate change rules whom President-elect Donald Trump has tapped to run the agency -- is not expected to seek to roll back the agency's greenhouse gas endangerment finding that underpins all of its climate rules, at least not immediately, legal experts say.

These sources' expectations run counter to calls from some conservative critics of President Obama's climate policies who see Pruitt's nomination as a chance for bold policy and are urging him to [scrap the finding](#). At a Dec. 8 event, such critics argued that revoking the endangerment finding could end EPA's ability to regulate GHGs once and for all, and would remove legal roadblocks that environmentalists may put up to slow the new administration's effort to dismantle rules.

But one industry attorney and former EPA official says that no matter what the incoming administration may want to do, "Addressing the endangerment finding simply cannot be the first priority. The new administrator will be stepping into a legal maelstrom involving major rules at various stages of litigation."

That includes suits over the new and existing power plant GHG rules, the Clean Water Act jurisdiction rule, pending petitions on air pollution transport, regional haze plan approvals and more. "Plus, there will be various rulemakings that will be subject to review under a transition memorandum and/or considerations by Congress pursuant to the Congressional Review Act," the attorney says.

The source adds: "Thus, the first order of business is to get a grip on all these pressing matters and decide on an intelligent and sober legal/regulatory strategy for each. This task should not be underestimated. For each item, there will be options and sub-options and you will never be able to make everyone happy."

Other pressing priorities that the EPA administrator must face is to "affirmatively address and be part of interagency discussions on changing the course of energy policy in this country" and the "need to spend time up on Capitol Hill for the confirmation process." That takes significant time "even in the best of circumstances" and will require Pruitt to visit with Senate environment committee members, leadership and others, prepare for his hearing, testify, and answer expected written questions.

"There are only so many hours in a day," the source says. "So, against all this crush of work and given the fact that seriously addressing the endangerment finding cannot be done with the stroke of a pen, I would expect that the effort will take a back seat during the early days of the new administration and, most likely, much further" into it.

There is no "magic bullet lying around that can be used. Seriously trying to reverse nearly a decade of work and subsequent refinement and interpretation on the science of climate change and the administrator's assessments and judgments concerning this body of work will take an enormous effort. So while it may be talked about as a high priority, it simply can't be."

### 'Unwise' Option

Similarly, Dick Stoll -- a former EPA attorney who worked in the general counsel's office from 1973-1981 and is now in private practice -- tells *InsideEPA/climate* that it "would be unwise" for Pruitt to direct EPA to reverse the endangerment finding.

"First, they would need to develop a new extensive administrative record that would be time-consuming and resource-intensive. Second, on judicial review, their conclusions based on that new record would be subject to scrutiny. And even conservative judges might be pretty skeptical in light of the increasing scientific consensus that there is at least

some observable change in the climate and at least some contribution by humans. Third, for the new EPA to in effect formally declare there is no reason to even deal with climate change at all could provoke extremely strong adverse public/political reaction,” he says.

Stoll adds that, “most importantly, I think there is no need for them to touch the endangerment finding in order to scale back GHG rules such as the Clean Power Plan.”

He notes that an endangerment finding “only mandates that some regulatory action follow” and “does not specify any particular level or degree of regulatory control.” With the Clean Power Plan, the Trump EPA could remove all of the beyond-the-fence line requirements without needing to alter the endangerment finding. “So why should they even risk all the downsides of going after” it?

Also, a third industry attorney does not believe Pruitt will seek to revoke the endangerment finding. “My reading of Mr. Pruitt’s previous statements . . . assuming he [will be] making this decision as opposed to being told what to do, is that his primary objection was to agency overreach. So on the endangerment finding question, arguably the agency in addressing the finding was doing what the Supreme Court told them to do and I think he would find it hard to dodge that, the duty to have a finding.

“And it would be hard to undo the finding, for which there is such ample scientific basis.”

Undoing the finding would require Pruitt “to marshal counter-ving facts and it is hard to see how he could prevail in doing that,” the source says.

Instead, this attorney, like Stoll, believes it is much more likely that Pruitt seeks to revisit the Clean Power Plan and limit its standards to actions that occur within the fence line of a regulated facility.

However, the source also notes that Pruitt’s tactics will depend on the signals he gets from the White House. But even if Trump intends for a strident approach, “I think the unrolling of the endangerment finding or the congressional mandate to regulate GHGs via *Massachusetts v. EPA* -- either of those is a lift too heavy, given the facts and the political lineup on Congress.”

Even Marlo Lewis of the Competitive Enterprise Institute told *E&E TV*’s “[On Point](#)” [Dec. 12](#) that undoing the finding will have to be navigated carefully. “[I]n my speculation, it would not be an urgent priority. It might be a long-term priority. There are other kinds of reforms that would address the endangerment finding that would probably be easier to accomplish than actually reversing it through a rulemaking.”

He argued having Congress amend the Clean Air Act to say it does not include GHGs is an easier option, though other sources have said such a plan would face significant hurdles such as a staunch Democratic filibuster in the Senate.

Lewis added that if GHG rules are curtailed, then “you will make the U.S. economy safe from EPA overreach for the next couple of years. So I don’t think this is something that they’re going to try right out of the box.”

### **'Scientific Cat Fight'**

Patrick Michaels of the Cato Institute, who told a Dec. 8 Heritage Foundation event that he expects the Trump administration to “try and stop the nonsense,” also wrote in a Dec. 8 op-ed in [The Hill](#) that if Pruitt does seek to revoke the finding, “[W]e may be about to witness the scientific-cat fight of our time.”

The National Mining Association also argues that Pruitt will take reasonable, rather than strident, actions, writing in a [Dec. 14 blog post](#), “Pruitt Comes to Town,” that the “mournful lamentations, the rending of robes, the wailing and keeling over the nomination of [Pruitt] have echoed throughout the Acela corridor.” But a “more plausible reaction would see Pruitt’s nomination as not about weakening legitimate environmental protections but about curbing EPA’s rogue means of securing them.”

But one environmentalist says Pruitt’s nomination -- along with other Cabinet nominees that deny mainstream climate science -- means for the environmental community that “there’s no nuance or gray area here. What we’re seeing is the selection of ideologues who do not believe in the concept of common good or any regulation. There is no balance here, just complete and utter zeal.”

The source says “this isn’t a time for our side to try to ‘work with’ this administration, it’s a time for us to mobilize our members, empower the public, and stand up as strongly as possible” to what they expect to be bold efforts, such as revoking the endangerment finding.

The source says that beyond what Pruitt might do on climate policy, his mission is “to destroy the EPA” and that he will “cripple enforcement and oversight” and “downsize to extreme levels.” -- Dawn Reeves ([dreeves@iwpnews.com](mailto:dreeves@iwpnews.com))

Related News | [Climate Mid-Day](#) | [Climate Regulation](#) |

181536

---

News  
Daily News  
Climate Beat Blog

Features  
The Docket Room  
Outlook 2016  
Paris Agreement

Topics  
Congress  
Litigation  
Regulation  
States

InsideEPA/Climate  
About Us

**SITE LICENSE AVAILABLE**

Economical site license packages are available to fit any size organization, from a few people at one location to company-wide access. For more information on how you can get greater access to InsideEPAclimate.com for your office, contact Online Customer Service at 703-416-8505 or [climate@iwnews.com](mailto:climate@iwnews.com).

© 2016. Inside Washington Publishers | [Contact Us](#)