

## WILL THESE ENVIRONMENTAL REGULATIONS SURVIVE?

*By Gary Antonides*



Donald Trump has promised to do away with many regulations, particularly those that President Obama has initiated. This is supposed to unburden businesses from the costs associated with the regulations. However, he has not, in general, indicated why the original purposes of the regulations are not justifiable. Nor has he been very specific or consistent in his comments. For example, he said climate change is a hoax perpetrated by the Chinese, then said he was joking, and then said he would not do away with any regulations that have to do with safety or the environment. He has also vowed to dismantle the EPA in almost every form.

As far as the environment is concerned, it seems to be the consensus that at least three major initiatives may be revoked, changed, or ignored. Unfortunately, when politicians or the media talk about these regulations, they usually don't deal with the regulations in any detail. The purpose of this article is not necessarily to justify these regulations, just to inform readers about them. The three regulations covered are:

- Paris Climate Change Agreement
- Clean Power Plan
- Waters of the U.S. Rule

### Paris Climate Change Agreement

<https://www.nytimes.com/2016/11/11/us/politics/donald-trump-climate-change.html> notes that Mr. Trump has already vowed to "cancel" the 2015 Paris climate agreement, which commits more than 190 countries to reduce their emissions of planet-warming carbon dioxide pollution. Mr. Trump cannot legally block other countries from fulfilling their Paris agreement commitments, but he can, as president, choose not to carry out the Paris plan in the United States. That could doom the Paris agreement's goal of reducing carbon dioxide emissions enough to keep atmospheric warming from increasing 2 degrees Celsius (3.6 deg. F.) above pre-industrial levels. This is the point above which, many scientists say, the planet would be locked into an irreversible future of extreme and dangerous warming. Since 1880, it has already risen about .85 deg. C.

Without the full participation of the United States, which is the world's second-largest greenhouse gas polluter after China, that goal is probably unattainable, even if every other country follows through on its pledges. And, the experts say, without the participation of the United States, other governments are less likely to carry out their pledged emissions cuts.

After the election of Mr. Trump, global negotiators, including U.S. Secretary of State Kerry, gathered for a 12-day conference in Marrakesh, Morocco to hash out the next steps for the Paris accord: how to verify that commitments are being met, and how to pay for enforcement by poor countries that cannot afford the technology or energy disruptions.

Scientific reports released over the last two years have concluded that the measurable warming of the planet because of human activities has already begun. 2016 was the hottest year on record, passing the previous records set in 2015 and 2014. An analysis by Climate Interactive, a scientific think tank that provides data used by many governments, concluded that the policies by the United States would account for about 20 percent of the expected greenhouse gas reductions under the Paris plan from 2016 to 2030.

<https://www.nytimes.com/2016/11/04/business/energy-environment/paris-climate-change-agreement-official-now-what.html> reports that top energy policy makers and corporate leaders caution that it will be challenging to meet the Paris goals. Many companies have not even figured out yet how much greenhouse gas they emit, much less made plans to curb them. Rapid technological advances in areas like electric cars are not enough to stop the world's long climb in oil consumption, let alone reverse it. A carbon price or tax that would force industries to pay for the pollution they spew is another strategy to reduce emissions, but the financial framework for this has barely started to emerge. As noted, the goal of the Paris Agreement is to limit the increase in global temperatures to 2 degrees Celsius. But it is also to strive for 1.5 degrees Celsius if possible. Even 2 Deg. C may prove problematic. If every country fully accomplishes its initial pledges, the increase would be closer to 2.7 degrees, according to Fatih Birol, executive director of the International Energy Agency, which is based in Paris. In the next several years, countries are supposed to set additional goals for deeper reductions.

Many companies will have to have a strong financial imperative to make sweeping changes to address climate change. Fledgling exchanges for trading carbon emissions rights have attracted limited interest, and the prices on

those markets are well below the \$100 a ton or more that experts say would force companies to limit their emissions of greenhouse gases. The market price is now only \$6.

Worldwide petrochemical consumption is doubling every 10 years. Aviation fuel consumption has surged as hundreds of millions of people in China and other advanced developing countries have become able to afford air tickets. And sales of fuel-guzzling trucks have soared in developing countries.

In the case of electric cars, even though they have increased eleven fold in the last five years, they still represent a little less than 1 percent of all cars sold. According to one analysis, if half the cars sold for the next 20 years were electric, worldwide oil demand would keep rising because trucks and planes are now the main drivers of the growth in oil consumption. Even so, automakers will continue to push electric cars because they are convinced that regulators will keep loading more rules onto gasoline- and diesel-powered cars. "If you don't have 20 percent-plus of your sales in electric cars, you're not going to make it," said Carlos Ghosn, the chairman and chief executive of Nissan and Renault and the chairman of Mitsubishi Motors.

<https://www.c2es.org/international/negotiations/cop22-marrakech/summary> reports that, despite the looming uncertainties following the election of Donald Trump, governments meeting in Marrakech, Morocco, pushed forward with the Paris Agreement, setting 2018 as their deadline for completing the nuts-and-bolts decisions needed to fully implement the agreement. Marrakech was a transition from the years of negotiation that produced the Paris Agreement to a new phase focused on implementation.

Although the agreement was designed to apply from 2020 onwards, countries moved more quickly than anticipated to ratify the agreement and bring it into force. In the case of the U.S., President Obama was able to accept the agreement through executive action, without seeking Senate advice and consent, because it elaborates the UNFCCC (which received Senate approval). UNFCCC is the United Nations Framework Convention on Climate Change, an international environmental treaty negotiated at the Earth Summit in Rio de Janeiro in June 1992, then entered into force in March 1994.

The threshold for entry into force of the Paris agreement was formal acceptance by 55 countries accounting for at least 55 percent of global emissions, and that was reached October 2016. By the close of the Marrakech conference, it had been ratified by 111 countries representing more than three-fourths of global emissions. Negotiations will resume in May, 2017.

### **Clean Power Plan (CPP)**

The Clean Power Plan of 2015 implements the U.S commitment under the Paris accord. At its heart is a set of EPA regulations intended to curb planet-warming pollution from coal-fired power plants. If enacted, the rules could transform the American electricity sector, close hundreds of coal-fired plants and usher in the construction of vast new wind and solar farms. The plan is projected to cut U.S. power plant emissions 32 percent from 2005 levels by 2030. But the program is currently under litigation by 28 states and more than 100 companies, and it is expected to go before the Supreme Court.

<http://money.cnn.com/2016/09/23/news/economy/donald-trump-regulation/> reports that Trump calls the Clean Power Plan a job-killing regulation. While it would kill jobs in some industries like coal and oil it would create jobs in others such as wind and solar. An analysis by the Federal Register estimates that the regulation would cost approximately 25,000 jobs over a 10-year period across coal, electricity and natural gas industries. There would also be approximately 52,000 to 83,000 full and part-time jobs created over the same time in clean energy industries

Under the law, the EPA sets a goal for reducing carbon emissions. Then the states decide how they'll meet that goal. Since the Supreme Court put a "stay" on the law in February 2016, the EPA cannot yet enforce it.

[https://www.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan#print\\_describes](https://www.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan#print_describes) the Clean Power Plan as fair and flexible. It will reduce carbon pollution from power plants, the nation's largest source, while maintaining energy reliability and affordability. Fossil fuel-fired power plants make up 31 percent of U.S. total greenhouse gas emissions. These are the first-ever national standards that address carbon pollution from power plants. The CPP provides states and utilities ample flexibility and the time needed to achieve these pollution cuts with reasonable cost.

Fossil fuels will continue to be a critical component of America's energy future, and the Clean Power Plan ensures that the remaining fossil fuel-fired plants will operate more cleanly and efficiently while the capacity for zero- and low-emitting power sources is expanded.

The final rule is the result of unprecedented outreach to states, tribes, utilities, stakeholders and the public, including more than 4.3 million comments EPA received on the proposed rule.

The transition to clean energy is happening faster than anticipated. Actually, carbon and air pollution are already decreasing. The CPP accelerates this momentum.

The transition to cleaner sources of energy will better protect Americans from other harmful air pollution, too. By 2030, emissions of sulfur dioxide from power plants will be 90 percent lower compared to 2005 levels, and emissions of nitrogen oxides will be 72 percent lower. Because these pollutants can create dangerous soot and smog, these historically low levels mean we can expect to avoid 3,600 premature deaths, 1,700 heart attacks, and 90,000 asthma attacks in 2030 and every year beyond.

The Clean Air Act, last amended in 1990, created a partnership between EPA, states, tribes and U.S. territories with EPA setting goals and states choosing how they will meet them. The final Clean Power Plan follows that approach. EPA is establishing both interim and final carbon dioxide (CO<sub>2</sub>) emission rates for fossil fuel-fired electric generating units. The goals are in terms of the rate of fuel use in pounds per megawatt hour as well as a mass-based state goal measured in total short tons of CO<sub>2</sub>. States will then develop and implement plans that ensure that the power plants in their state achieve the interim goals over the period of 2022 to 2029 and the final goals by 2030.

In setting goals, the EPA considered the ranges of reductions that can be achieved at a reasonable cost by (1) improving the heat rate of existing coal-fired power plants, (2) using lower-emitting natural gas plants, and (3) using new zero-emitting renewable energy sources (like wind and solar). The rule also gives states the option to work with other states on multi-state approaches, including emissions trading. Trading is a proven approach and creates a financial incentive to reduce emissions where the cost of doing so is the lowest.

The EPA, the Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC) are coordinating efforts to monitor the implementation of the rule.

Each state plan must include provisions that will demonstrate that the plan is making progress toward meeting the 2030 goal. The rule provides 15 years for full implementation of all emission reduction measures, with incremental steps for planning and demonstration that progress is being made.

EPA is creating a Clean Energy Incentive Program (CEIP) to reward early investments in wind and solar generation, as well as energy efficiency programs that deliver results during 2020 and/or 2021. The outreach and engagement with stakeholders and the public will continue now that the rule is final.

### **Waters of the United States Rule**

In August 2015, the EPA created the "Waters of the United States Rule" which allows it to regulate land use to prevent water contamination. For example, if a farmer wanted to convert wetlands to farmland, they may need a permit in order to do that. The rule is under the same Supreme Court stay as the CPP, and is not currently being enforced.

There are costs associated with it, as EPA's own analysis shows. Projects can get delayed, and it will have an impact on developers, manufacturers and the mining industries. The EPA's analysis notes benefits and costs.

<https://www.epa.gov/cleanwaterrule/what-clean-water-rule-does> says that the EPA and the U.S. Army Corps of Engineers finalized the Clean Water Rule to protect the streams and wetlands that form the foundation of the nation's water resources. Protection for many of the nation's streams and wetlands under the Clean Water Act as amended in 1972 has been confusing, complex, and time-consuming as the result of [Supreme Court decisions](#) in 2001 and 2006. The Clean Water Rule ensures that waters protected under the Clean Water Act are more precisely defined, more predictably determined, and easier for businesses and industry to understand.

Specifically, the Clean Water Rule **clearly defines and protects tributaries that impact the health of downstream waters**. While the Clean Water Act protects navigable waterways and their tributaries, the Clean Water Rule provides protection for headwaters that science shows can have a significant connection to downstream waters. The rule also protects waters that are next to rivers and lakes and their tributaries because science shows that they also impact downstream waters.