

From: [Kathryn Zyla](#)
To: [Carol Grant](#), Emily.boedecker@vermont.gov, Ken.Alex@gov.ca.gov, matthew.rodriquez@calepa.ca.gov, [Gibbs, Michael@ARB](mailto:Gibbs.Michael@ARB), [Ned Bartlett](#), Peter.walke@vermont.gov, [Rob Klee](#), [Nichols, Mary D. @ARB](mailto:Nichols.Mary.D.@ARB), [Aimee Barnes](#), Alexa@EPA [Kleysteuber](#), [Angela Navarro \(GOV, Drumheller, Bill \(ECY\), Christine Kirby \(DEP, Kendall Coats, Coats, Kara S. \(DNREC\), Craig Segall, Dan Carol, David Thornton, David Thornton, Davis, Chris \(GOV\), Devon Dodson –MDE-, Dowd, Michael \(DEQ\), Edie@ARB Chang, Gordon, Jessica@ARB, Heather@EPA Hickerson, Heidi Hales, Jamie Callahan, Janet Coit, Jared Snyder \(DEC, Jessica Shirley, Jonathan Schrag \(DPUC, Katie Dykes, Keri Enright-Kato, Lois New, Martha Rudolph, martin.suuberg, McCleary, Macky, MCONNAHA Colin, MCONNAHA Colin, Patrick McDonnell, SADHIR Ruchi * GOV, Ricketts, Sam \(GOV\), Sotos, Mary, Clark, Stuart \(ECY\), Susan E. Love \(DNREC, \[rcorey@arb.ca.gov\]\(mailto:rcorey@arb.ca.gov\)](#)
CC: [Gabriel S Pacyniak](#), [Vicki Arroyo](#), [Christopher Coil](#), [Hampden Macbeth](#)
Date: May 16, 2017 at 4:23 PM
Subject: Virginia executive directive news and misc updates

Dear state leaders,

We wanted to let you know about some exciting news out of Virginia today--

Virginia Governor Terry McAuliffe signed Executive Directive 11, which instructs the Virginia Department of Environmental Quality to begin the process of promulgating a regulation to reduce carbon emissions from power plants. The regulation is to include provisions to ensure that it is “trading-ready” to allow for the use of market-based mechanisms and the trading of carbon dioxide allowances through a multi-state trading program; and establish abatement mechanisms providing for a corresponding level of stringency to those imposed in other states with such limits. The proposed regulation will be presented to the state Air Pollution Control Board by no later than December 31, 2017 for consideration for approval for public comment.

The text of the Executive Directive 11 can be found here: <http://governor.virginia.gov/media/9155/ed-11-reducing-carbon-dioxide-emissions-from-electric-power-facilities-and-growing-virginias-clean-energy-economy.pdf>

A press release on the Executive Directive 11 can be found here: <https://governor.virginia.gov/newsroom/newsarticle?articleId=20285>

Congratulations, Virginia folks!

In announcing the EO, Governor McAuliffe also highlighted his signing of the 12-state letter urging the Trump Administration to remain in the Paris Climate Agreement. Many of your governors also signed this letter (and we were happy to help facilitate it). I'm not sure that we've shared it with this full group, so for anyone who has not seen

it, it's available here: <http://www.georgetownclimate.org/articles/12-governors-urge-trump-to-stay-in-paris-agreement-keep-u-s-commitments.html>

As you may all have heard, we are not expecting a formal decision on the Paris Agreement until after the G7 summit in Italy at the end of May.

We also wanted to let you know that we are working with the Georgetown IT department to develop a platform that can assist this group with communications and shared resources, and will keep you posted. (Please let us know if you have any thoughts on key features for that platform.)

Finally, please find below our latest update on federal developments (with thanks to Hampden Macbeth for compiling them), and as always, please let us know if we can be of any help to you on any of these issues!

Best,

Vicki, Kate, Gabe, and Hampden

--

Kathryn A. Zyla
Deputy Director
Georgetown Climate Center
e: zyla@georgetown.edu | p: 202-469-1753
<http://www.georgetownclimate.org>

--

Federal Updates:

Nominations

Independent agency nominations (updated 5/16): President Trump [nominated](#) Neil Chatterjee and Robert Powelson to the Federal Energy Regulatory Commission (FERC). FERC [lacks a quorum](#) necessary to issue rules, but the confirmation of Chatterjee and Powelson would [provide](#) FERC with a quorum. Chatterjee is an aide to Mitch McConnell and Powelson is a Pennsylvania regulator and current president of the National Association of Regulatory Utility Commissioners. Senate Energy and Natural Resources Committee Chairwoman Murkowski has [pledged](#) to move the nominees through her panel “as quickly as possible.”

Senior agency/department appointments (updated 5/16): Rachel Brand's nomination to be Associate Attorney General is [likely to be considered](#) the week of May 15. If confirmed, she would manage the Justice Department's Environment and Natural Resources Division (ENRD) among other responsibilities. Jeff Rosen's nomination to be Deputy Transportation Secretary is [likely to be considered](#) the week of May 15. John Sullivan, the nominee for Deputy Secretary of State, [said](#) that the US would be “best served” by remaining in the Paris Agreement at his

confirmation hearing on May 9. [Daniel Simmons](#), formerly of the American Legislative Exchange Council, will serve as the Department of Energy's Office of Energy Efficiency & Renewable Energy Principal Deputy Assistant Secretary. Dan Brouillette [has been nominated](#) to be the Deputy Secretary of Energy. Andrew Wheeler, former Republican Environment and Public Works Committee staff, will [likely be nominated](#) to be Deputy EPA Administrator, but it could be several weeks until he is officially nominated.

Budget/Spending

Trump budget (updated 5/16): The White House is [reportedly](#) attempting to halt some Department of Energy loan guarantees and grants that it zeroed out in its [budget blueprint](#). However, the Department [told](#) its program offices that it would honor all funding commitments for “previously obligated” grants and cooperative agreements. Over 1,000 firms [sent](#) a [letter](#) urging House and Senate appropriators to strengthen the Energy Star program, which had also been targeted for elimination in the blueprint. The administration is supposed to release a more detailed budget that will contain line-by-line spending for agencies in May. Budget proposals are the [first step](#) in a lengthy process that determines federal spending. Congress will next consider a budget resolution to determine the total level of discretionary funding – the size of the pie – and then, through the appropriations process, determine program-by-program funding levels (the slices of the pie).

Executive Action

Withdrawing from Paris Agreement (updated 5/16): Despite earlier indications that the Trump administration intended to make a decision on whether to withdraw the US from the Paris Agreement before President Trump traveled to the G-7 summit in Italy at the end of May, the administration has now [decided](#) it will make that decision after the summit. 12 Governors sent a [letter](#) to President Trump on May 3 urging the President to keep the US in the Paris Agreement. A particularly [contentious issue](#) in the discussion around possibly withdrawing appears to be dueling interpretations of Article 4.11 of the Paris Agreement and whether the US can replace its Paris promise to cut emissions with a less ambitious goal. The White House counsel office [believes](#) that the US cannot replace the promise with a laxer goal, [as does](#) one of the drafters of the Agreement.

CPP and new source rule litigation (updated 5/16): The parties [submitted](#) briefs to the DC Circuit on May 15 on whether the Clean Power Plan should be remanded to the agency or held in abeyance. Administrator Pruitt has [recused](#) himself from the Clean Power Plan litigation because he was involved in the litigation when he was Oklahoma attorney general. The DC Circuit on April 28 [granted](#) the Trump administration's request to hold the CPP litigation in abeyance for 60 days as EPA reviews the CPP following the energy independence executive order.

Fairbanks Declaration (added 5/16): Secretary of State Rex Tillerson and seven foreign ministers from Arctic nations signed the Fairbanks Declaration on May 11. The nations agreed to set a collective target for reducing black carbon emissions between 25-33% below 2013 levels by 2025.

Executive orders (updated 5/16): The Office of Management and Budget [issued](#) a [memo](#) the week of May 8 detailing requirements for the section of the [energy independence executive order](#) that instructs agency heads to review all regulations, guidance documents, and policies that burden the development of energy resources. President

Trump also signed an executive order on [review of designations under the Antiquities Act](#) on April 26 and on [implementing an America-first offshore energy strategy](#) on April 28.

Regulations

Regulatory process (updated 5/16): The Senate Homeland Security and Governmental Affairs Committee [will vote](#) on four regulatory reform pieces of legislation the week of May 15: [Regulatory Accountability Act](#), the [REINS Act](#), the Midnight Rules Relief Act, and the Small Business Regulatory Flexibility Improvements Act. The REINS Act and Midnight Rules Relief Act have already passed the House; the Regulatory Accountability Act and the Small Business Regulatory Flexibility Improvements Act have not. The House has passed a series of regulatory reform bills, including the [HONEST Act](#), the [SCRUB Act](#), the [Regulatory Integrity Act](#), and the [OIRA Insight, Reform, and Accountability Act](#), that still await action in the Senate.

Eight Republicans on the Senate Environment and Public Works Committee [sent a letter](#) to EPA's Regulatory Reform Task Force under [the enforcing the regulatory reform agenda executive order](#) urging that the Task Force focus on rules that rely on either the social cost of carbon or co-benefits to justify the cost burdens on the economy.

Agencies

EPA's Endangerment Finding: The Texas Public Policy Foundation filed a [petition](#) on May 1 with EPA, [arguing](#) that the endangerment finding is invalid because EPA did not submit the endangerment finding to the Science Advisory Board for peer review. In 2009 litigation, the DC Circuit declined to find the failure to submit the endangerment finding to the Board was fatal. This petition follows a petition for reconsideration of the endangerment finding that was [filed](#) by the Competitive Enterprise Institute and board members of the Science and Environmental Policy Project in February. The New York Times has [reported](#) that Administrator Pruitt has informed the White House and Congress that he will not seek to reverse the 2009 endangerment finding because such a move would likely be overturned by the courts. Pruitt argued against including language calling for a repeal of the endangerment finding in the [energy independence executive order](#); the executive order did not include language on the endangerment finding.

EPA website (updated 5/16): On April 28, EPA's climate change website [was removed](#). The following week, EPA [removed](#) even more mentions of climate change from its website. The content will be changed to reflect President Trump's energy independence executive order and updated language about the Clean Power Plan. EPA said it would follow agency guidelines on archiving online content from the Obama administration. The City of Chicago is now [hosting](#) EPA's climate change information on its [website](#).

Continued waiver for California under the CAA: According to a [report](#), the administration appears to have postponed plans to rescind California's currently in-effect Clean Air Act waiver, but Administrator Pruitt has [declined](#) to answer questions on whether he would allow EPA to maintain its waiver. The waiver allows California to set more stringent vehicle air pollution standards than EPA; the CAA requires EPA to grant California the waiver with few exceptions, and waivers have been previously granted in all but one circumstance. Rescinding a waiver has [never been attempted before](#) and would likely be subject to legal challenges.

Fuel Efficiency Standards (updated 5/16): EPA Administrator Pruitt has [asked](#) California to participate in the review of federal vehicle emission standards. In the [letter](#) requesting California's participation, Pruitt did not mention California's waiver under the Clean Air Act. The White House has [told](#) automakers that it will seek to broker an agreement with California to avoid a patchwork of vehicle standards across the country as the automakers have cautioned against aggressively rewriting the standards. EPA and NHTSA filed a [notice of intent](#) to reconsider the Final Determination of the midterm evaluation of GHG standards for model year 2022-2025 cars and light trucks in March. EPA and NHTSA will now determine by April 1, 2018 whether the previously established GHG standards for model years 2022-2025 are still appropriate. April 1, 2018 was the previous deadline for completing the midterm review.

Grid study: [Travis Fisher](#), who has previously been [critical](#) of support for renewables, will reportedly lead the Department of Energy's [60-day study](#) of how renewable energy policies may be accelerating the decline of baseload coal and nuclear power plants and how that may impact grid reliability. The study may be a pretext for walking back incentives for renewable energy sources in favor of conventional sources of energy.

Methane

BLM methane rule (updated 5/16): The US Senate [voted down](#) a Congressional Review Act resolution to overturn the [BLM's methane regulation](#) by a vote of 51-49 with Republican Sens. Collins (ME), Graham (SC), and McCain (AZ) crossing the aisle to join every Democratic Senator to oppose the motion. However, the Interior Department has indicated that it will take steps to "suspend, revise, or rescind" the rule. Democratic Senators Heitkamp (ND) and Manchin (WV) wrote a [letter](#) to the Department of Interior urging that "significant modifications to the rule" be pursued.

New source methane rule: On April 18, EPA [announced](#) that it is conveying a proceeding for reconsideration of the agency's new source methane rule in response to the oil and gas industry's petitions for reconsideration of the rule. EPA claimed that the petitions raised at least one objection to the rule - alternative means of emission limitations and inclusion of low-production wells - that arose after the comment period or was impracticable to raise during the comment period. Attorneys at environmental non-governmental organizations [argue](#) that the American Petroleum Institute commented on alternative compliance mechanisms and that EPA sought comment on low-production wells and thus reconsideration of the rule is not appropriate. The Justice Department [filed a motion](#) to hold litigation over EPA's new source methane rule in abeyance on April 7 and [other parties](#) to the litigation have weighed in on the motion; parties have not filed opening briefs in the litigation.

Existing source methane rule: EPA [withdrew](#) an information collection request to oil and natural gas producers that was to inform the development of a rule to regulate methane emissions from existing sources after the Governor of Kentucky and Attorneys General from Texas, Alabama, Arizona, Kansas, Louisiana, Mississippi, Montana, Oklahoma, South Carolina, and West Virginia [requested](#) EPA take this step. The Attorneys General from Massachusetts, California, Illinois, Maryland, Maine, New York, Rhode Island have [written](#) to EPA Administrator Pruitt to urge EPA to reconsider the decision to withdraw the information collection request or otherwise explain how EPA intends to fulfill its legal obligation to address methane leaks that are endangering public health and welfare.

Congress

EPA's GHG regulatory authority: On January 24, Rep. Gary Palmer introduced the [Stopping EPA Overreach Act](#) (H.R. 637), which would strip EPA of its authority to regulate greenhouse gases (GHG) by defining an "air pollutant" under the Clean Air Act as excluding GHGs, and would invalidate the CPP and EPA's new source methane rule. It currently has 116 Republican cosponsors. House Speaker Paul Ryan included this legislation in the House Republican's 2016 campaign platform, [A Better Way](#). A vote has not yet been scheduled on the legislation. EPA Administrator Pruitt has [hinted](#) that he would like to see Congress address the issue of whether carbon is an air pollutant under the Clean Air Act.

Tax reform: Treasury Secretary Mnuchin [indicated](#) that the administration is not planning to move tax reform legislation and an infrastructure package together. The White House released its [blueprint](#) for tax reform on April 26. Amid concerns that the wind production tax credit may be targeted for repeal in tax reform legislation, the wind industry is [highlighting](#) that the vast majority of wind investment (86% of wind farms) is in Republican districts.

Omnibus energy legislation: The Chair and Ranking Member of the Senate Energy and Natural Resources Committee [announced](#) on May 3 that they intend to try to pass major energy legislation again. Last Congress's energy legislation in the Senate included provisions on energy infrastructure, energy efficiency, grid security, and natural gas exports. The legislation passed the Senate and a less ambitious package passed the House; but the Senate and House were not able to reconcile the differences in the two bills before Congress adjourned.

Renewable energy legislation (updated 5/16): Senator Wyden (D-OR) [introduced](#) the Clean Energy for America Act, which would increase tax incentives for clean energy as emissions are lowered. Power plants emitting 35% less carbon dioxide than the national average could qualify for incentives under the plan. Zero emission facilities could receive the maximum of either a production tax credit or an investment tax credit. Transportation fuels could qualify if their life-cycle emissions were at least 25% below the US average and zero or "net negative" emissions could receive the maximum production tax credit. 22 Senators that caucus with the Democrats are co-sponsors.

Oregon Senator Jeff Merkley [introduced](#) legislation to achieve 100% zero carbon power by 2050. The measure would support energy efficiency; improve grid reliability; include changes to the tax code related to oil, coal, and gas; and permanently extend tax credits for qualified electric and hybrid vehicles.

Climate Solutions Caucus (updated 5/16): 12 members of the Caucus (6 Democrats and 6 Republicans) have [reintroduced](#) the Climate Solutions Commissions Act to establish a 10-person commission to review "economically viable" policies to reduce GHG emissions. The bipartisan - there are an equal number of Republicans and Democrats - [Climate Solutions Caucus](#) explores policy options that address the impacts, causes, and challenges of climate change.

Infrastructure package (updated 5/16): The Trump administration will [unveil](#) a statement of "principles" within a month on its \$1 trillion infrastructure plan with the expectation that lawmakers will work on the package during the third quarter of 2017. The plan will be paid for with \$200 billion in direct federal funding and public-private partnerships and possibly tax reform and sale of some government assets.

