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Effects of the Clean Power Plan Repeal Uncertain for the Energy Industry

Environmental Protection Agency Administrator Scott Pruitt recently signed a measure to repeal the Clean Power Plan.

The Clean Power Plan is a rule finalized in 2015 (but has never taken effect) to combat global warming by assigning each state a goal for limiting emissions from existing power plants. Each state had until September 2018 to submit a plan to reduce emissions. If a state did not submit a plan, then the EPA would impose its own emission reduction plan on those states. At the time, the EPA estimated the Clean Power Plan would have reduced greenhouse gas emissions from power plants 32 percent below 2005 levels by the year 2030.

The Clean Power Plan never took effect because it has been tied up in the courts from lawsuits filed by various states, industry representatives and others against the EPA. In 2016, the United States Supreme Court temporarily blocked the rule from taking effect while the federal courts heard arguments related to these lawsuits. Similarly, the regulation to repeal the Clean Power Plan will also likely be opposed in the court system (by those parties that support the Clean Power Plan, including environmental advocacy groups and various state attorney generals), thus raising the possibility that the Clean Power Plan will not be fully repealed and replaced before the 2020 elections.

Elimination of the Clean Power Plan makes it less likely that the United States will fulfill its promises to reduce emissions as part of the Paris Climate Agreement. In June 2017, President Trump indicated that the United States would be withdrawing from the Paris Climate Agreement, however, the withdrawal from the Paris Climate Agreement is a lengthy process, which can take up to three to four years. In the meantime, the United States will still need to fulfill its promise to reduce emissions, with or without the Clean Air Plan. Many states (including Colorado, California and New York) have already implemented regulations stricter than those under the Clean Power Plan, as the power industry shifts from coal to cheaper, cleaner energy sources such as natural gas, wind and solar. A recent study showed that even without the Clean Power Plan, emissions from power plants in the United States are projected to fall 27 to 35 percent below 2005 levels by 2030 (which is within the target range of the Clean Power Plan).

Comment: Based on the fact that the Clean Power Plan, and the recent EPA measure to repeal the Clean Power Plan are likely to be held up in court for several more years, it is unclear, what if any, immediate impact this repeal measure will have on the energy industry. It is also unclear what, if any, immediate impact there will be on businesses and their carriers that are involved in the energy industry. We will continue to monitor the situation and progress of lawsuits related to both the Paris Climate Agreement and Clean Air Plan and will provide updates on significant changes as they occur. To access our information regarding the decision to withdraw from the Paris Climate Agreement, see an alert published July 6, 2017, available on our website: www.wglaw.com.

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