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5 on 45: Trump's EPA is rescinding the Clean Power Plan. What now?

October 11, 2017

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(MUSIC)

PITA: You're listening to 5 on 45 from the Brookings Podcast Network, analysis and commentary from Brookings experts on today's news regarding the Trump administration.

WALLACH: I'm Phil Wallach, a senior fellow in Governance Studies at the Brookings Institution. And today I want to talk about the Clean Power Plan which is back in the news once again.

The Clean Power Plan was one of the Obama administration's central initiatives to address greenhouse gas emissions—that is climate change. The plan regulates existing power plants, so all the fossil fuel powered power plants around the country are regulated by the Clean Power Plan, but it doesn't look like it's really ever going to come to fruition. The news that has it back in the headlines is that the Trump administration's Environmental Protection Agency, headed by Scott Pruitt, is announcing that it will be rescinding the Clean Power Plan; soon to be publishing a notice of that proposed action in the Federal Register.

The Clean Power Plan has always been controversial since it was first proposed for a number of reasons. One, people just think it's an inefficient way of advancing climate goals. The basic architecture of the Clean Power Plan, which rests on the Clean Air Act, is very complicated. It's not at all the result of legislation clearly targeted at the problem because Congress has never really passed any legislation clearly targeted at climate change. It came closest in 2009-2010 when the House of Representatives passed the Waxman-Markey bill, but the Senate never did pass that. And we've been left to build a climate change policy on top of the Clean Air Act which was a law originally passed to deal with local air pollution problems. So that was always an awkward fit, and the EPA, under Obama, did its best to work within the constraints that that imposed on it.

So some people have always thought that was an inefficient way, but people have also said that the ultimate plan that they arrived on was illegal. That it simply went beyond the statutory powers that the Clean Air gives them. And Scott Pruitt, now the

head of the EPA, was previously the Attorney General of Oklahoma and in that role he was one of the Clean Power Plans' leading critics and was at the center of litigation to have it ruled illegal.

Now that Pruitt is head of the EPA he is again emphasizing what he takes to be its fatal legal flaws. The EPA says that by its interpretation now the Clean Power Plan is simply illegal, and so it must be rescinded. It then says it will consider other alternatives to put in place.

But whereas the Clean Power Plan was really quite ambitious in the way that it would have required each state to hit certain kinds of efficiency improvement targets through a mix of plant level controls and then replacement of coal power by gas power or renewables, wind and solar, any rule likely to come out of the Trump administration would only probably focus on plant level efficiency measures. Which would be much more in line with traditional EPA air pollution controls. So what's the immediate impact of the recent news?

Well it's not a whole lot because the Supreme Court issued a remarkable stay back in February 2016, just before Justice Scalia died, which said that the Clean Power Plan would be stayed—that is held in limbo—until it fully worked its way through the courts. And it was working its way through the D.C. Circuit when Trump won, and they said they were going to sort of hold off and see what happens. So the rule has been in legal limbo, and in any case it wasn't going to fully come into force until 2021.

Since Trump's victory it's been pretty clear that the Clean Power Plan would never come into effect like the Obama administration envisioned it. And now we can be pretty sure that it's a dead letter, although there's certainly going to be further litigation in which environmentalists say that the EPA under Pruitt is getting the law wrong.

The bigger picture for climate policy is that it would be great to have Congress act to give clarity across this policy area, but as many people have surely noticed, Congress is having a hard time dictating clear policy on much of anything these days so it's certainly not likely to act on climate issues in the immediate future.

That means that action moves to states and cities, many of which are dedicated to addressing climate change issues, and realistically a lot of the action moves to 2021 after our next president takes office, potentially. Or certainly if Trump is still the president at that time his EPA at that point would certainly put their own stamp on climate policy across the board. So we'll see what happens in the States, and for now federal climate policy is definitely receding.

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