

Up in smoke Scott Pruitt signs a measure to repeal the Clean Power Plan

The attempt to undo Barack Obama's flagship environmental policy may be fought in the courts



Democracy in America

Oct 10th 2017

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TIE off and collar open, Scott Pruitt unveiled his plan to repeal the Clean Power Plan to loud applause in Hazard, Kentucky, a sleepy coal town in the state's mountainous south-east. "The war on coal is over," said Mr Pruitt, head of the Environmental Protection Agency (EPA), on October 10th. The next day, in Washington, DC he signed a rule aimed at rescinding the Obama-era policy, which seeks to curb carbon emissions from power plants by 32% in 2030, compared to 2005 levels. But far from being the end of the Clean Power Plan, Mr Pruitt's announcement is an opening salvo in a battle which could last for years.

The plan, which was drawn up more than three years ago, has never gone into effect. Just days after it was finalised, energy companies marshalled an impressive legal offensive, even recruiting Mr Obama's mentor at Harvard Law School to claim that his protégé was "burning the constitution". A federal court delayed implementing it until the EPA, now under new management, could issue a revised plan. Mr Pruitt's move is also likely to prompt legal action. The attorneys-general of New York and Massachusetts have already announced plans to sue the agency. That could spell years of regulatory

uncertainty for energy firms; a greener candidate could occupy the White House before the battle is over.

The EPA now argues that Mr Obama overstepped his authority in promulgating the Clean Power Plan. Indeed, the rule would have remade energy markets in unprecedented ways. While previous rules focused on requirements for individual plants, the plan took a systemic view—encouraging states to meet emissions targets by any means they chose, such as shifting to renewable sources, like wind or solar, and by switching to natural gas, which is significantly less dirty than coal. A companion rule would also have made it virtually impossible to open a new coal-fired power plant in America. Such comprehensive upendings of industry traditionally require legislation. But frustrated by the lack of cooperation from Congress, and keen to reveal his initiative at the 2015 Paris climate talks, Mr Obama issued the regulation under the auspices of the Clean Air Act. One long-time defender of strong environmental rules privately admits the rule was intended to be “aspirational”.

Still, the agency will not be able to sit on its hands. In 2007 in the landmark case *Massachusetts v EPA*, the Supreme Court held that greenhouse gases qualified as pollutants fit to be regulated by the Clean Air Act. In the first year of Mr Obama’s presidency, the EPA issued a rigorous report calling greenhouse gases a threat to human health—an “endangerment finding” in regulatory jargon—citing added risks of severe drought, hurricanes and wildfires. That finding is the basis of the climate-change regulations issued by the Obama administration. And as long as it is in place, the EPA must offer some plan to regulate emissions that warm the planet. Mr Pruitt, a known climate-change sceptic, no doubt wishes that were not the case. But reversing the endangerment finding would require him to marshal convincing scientific evidence.

His move, meanwhile, will be popular with Donald Trump, who is fond of paying homage to coal miners. In Kentucky, where Mr Pruitt spoke, there are fewer than 4,000 underground coalminers: 0.2% of the labour force. The decrease in their number is less the fault of a plan that never went into effect than the cheap natural gas produced by hydraulic fracking and the declining cost of renewable energy. The same market forces will also push most states to meet the Clean Power Plan targets even if the rule is ultimately repealed.

In his triumphal speech in Hazard, Mr Pruitt blasted the Clean Power Plan as “really about picking winners and losers”—something that should not be done by “any regulatory body”. A little more than a week before, Rick Perry, the energy secretary, issued a proposal to subsidise plants which competitive markets do not properly reward for “resiliency”. Mr Perry would offer “full recovery of costs” to plants that are able to keep 90 days of fuel stockpiled—a clearly intended handout to the struggling coal and nuclear industries. A former chairman of the Federal Energy Regulatory Commission argued that the policy “would blow the market up”. Some might call that picking winners and losers.