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Trump's EPA to maintain Obama-era Coal Plant rules, With a Twist

by Jennifer A. Dlouhy
Bloomberg December 26, 2018



Trump's EPA to Maintain Obama-Era Coal Plant Rules, With a Twist

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(Bloomberg) -- The Trump administration is poised to propose maintaining Obama-era restrictions on mercury pollution from power plants, responding to opposition from electric utilities that have already spent billions of dollars to meet the requirements.

At the same time, the Environmental Protection Agency is set to propose changes that may make it harder to toughen mercury emissions standards in the future by disavowing the legal justification for the regulation and altering the way its health benefits are

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measured.

The proposal reflects a balancing act for the Trump administration, which has struggled to address a rule loathed by coal producers, viewed warily by EPA officials who object to how it was justified and yet has already been complied with by power companies.

"We've been in compliance for a number of years now, the equipment is operating and it is effective. We really see no reason at all to roll back the requirements," said John McManus, senior vice president of environmental services at American Electric Power Company Inc. "Retired plants aren't coming back, and we see no reason to turn back the controls that are running on our existing plants."

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The 2012 rule prompted a wave of coal-fired power plant closures and drew the ire of a powerful foe: coal magnate Robert E. Murray, who has spent years crusading against the regulation in court. His coal company, Murray Energy Corp., argues its domestic sales have suffered as a result of the standards.

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But power companies such as Duke Energy Corp. have implored the EPA and White House to leave the mercury standards intact. Utilities have already spent some \$18 billion installing required technology to fulfill the requirements and satisfy April 2015 compliance deadlines that have long since passed, industry trade groups told the EPA this summer.

For instance, AEP has invested nearly \$8.8 billion on environmental equipment retrofits at its coal-fired power plants since 2000, with much of that equipment contributing to its compliance with the mercury rule. The utility-owner has retired 7,200 megawatts of coal-fired generation from 2011 through 2016 as part of its effort to meet the more stringent mercury rules. Mercury emissions from its plants have dropped 95 percent since 2001.

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Coal-fired power plants are the largest U.S. source of mercury, a metal that is converted in soil and water into a neurotoxin that can lower IQ, cause motor function deficits, damage the nervous system and lead to more heart attacks.

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"More mercury in the air means more mercury in the water, which means more mercury in the fish, which means more mercury in people who eat the fish," said Janet McCabe, an acting assistant administrator of the EPA's air office in the Obama administration. "That is especially problematic for young children, pregnant women and the babies they are carrying."

The EPA is set to propose keeping the mercury limits in place while simultaneously withdrawing an assertion the requirements are "appropriate and necessary" -- a legal benchmark under the Clean Air Act.

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The change would arm the rule's opponents with ammunition for another lawsuit challenging the mercury standards in an effort to win a court-ordered repeal. It's not clear any such litigation would prevail; a 2008 ruling by the D.C. Circuit Court of Appeals on another mercury rule sets a high bar.

Although the EPA is ensnared by the partial government shutdown, it has enough leftover funding to continue operating, at least this week. The agency is expected to issue the proposal as soon as Wednesday.

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The EPA also is set to recalculate the cost and benefits of the mercury rule in a way that dramatically shrinks its estimated potential health gains -- a change that could prevent the EPA from making the mercury pollution requirements more stringent in the future.

At issue are the broad health benefits that spring from regulations -- not just those that directly flow from reducing a pollutant explicitly targeted by individual rules. In the case of the mercury rule, for example, the technology utilities employed to curtail mercury emissions also pared the amount of nitrogen oxide and sulfur dioxide belched out of their power plants, which the EPA said would reduce asthma attacks, heart attacks and premature deaths.

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Bloomberg

Those "co-benefits" of the mercury rule were an essential figure in the Obama administration's calculation of the rule's ultimate price tag. Although the EPA estimated it would cost industry \$9.6 billion annually to install necessary technology, it said health benefits from reducing mercury and other non-targeted pollutants were worth nearly 10 times more.

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As much as 89 percent of the 2012 rule's health benefits came from reducing fine particulate matter -- beyond the toxic air pollutants the measure actually targeted, according to the EPA.

Now, under President Donald Trump, the EPA is set to assert that because it is leaning on its Clean Air Act authority to regulate hazardous air pollutants, it is improper to consider the health benefits of paring other pollution.

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The EPA may argue that pollutants regulated under other programs can't be used to "justify a regulation that is only supposed to be about hazardous air pollutants," said Jeff Holmstead, an assistant EPA administrator under former President George W. Bush.

By disregarding co-benefits, the new proposal is set to conclude that the rule's costs exceed its benefits. Environmentalists say the change could preclude the agency from counting these benefits to justify the cost of toughening requirements in the future.

The Trump administration approach would limit "the EPA's ability to recognize the full range of benefits that result from pollution control," said Joe Goffman, a former senior counsel in agency's air office. The

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result is “to limit the reach of the Clean Air Act as a tool for regulating air pollution and protecting public health.”

The mercury standards have been the subject of litigation for years. After they were imposed in 2012, the coal industry sued, ultimately forcing the EPA to revisit its conclusions. The Obama administration reinstated the regulation in 2016 and Murray Energy sued to block it, but a federal appeals court delayed the case so the Trump administration could reconsider the rule.

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--With assistance from Mark Chediak, Amena Saiyid and Jim Efstathiou Jr..

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