



EPA Foe Pruitt to Face No Conflicts Running Agency He Sued

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December 7, 2016

Leading active lawsuits challenging key Environmental Protection Agency regulations is not expected to hamper Oklahoma Attorney General Scott Pruitt's (R) ability to shape those same rules as President-elect Donald Trump's pick to head the agency.

While environmental advocates hope that Pruitt would recuse himself from some decisions related to carbon dioxide limits on power plants, federal air quality standards for ozone and clean water regulations—all of which he is currently challenging in court—former federal agency attorneys said they were aware of no rules that would compel such a decision on his part.

“In terms of the limitation, I’m not aware of any [Department of Justice] ethics rule that would apply to this situation,” Jim Rubin, a partner at Dorsey & Whitney LLP’s Washington, D.C., office who previously served in the Justice Department’s Environment and Natural Resources Division, told Bloomberg BNA.

Pruitt is involved in several active lawsuits against the EPA, including challenges to the Clean Water Rule, Clean Power Plan and methane limits for the oil and natural gas industry, all of which Trump has vowed to scale back or repeal.

No Conflicts Seen

Richard Stoll, a partner in the Milwaukee and Washington, D.C., offices of Foley & Lardner LLP, also saw no conflict of interest in Pruitt’s participation in lawsuits over regulations he would oversee as EPA head.

“The practical result of any ‘settlement’ with parties challenging the [Clean Power Plan] or [Clean Water Rule] would require the new EPA to go through a rulemaking process to revoke the rule in whole or in part,” Stoll told Bloomberg BNA in an e-mail.

“I know of no rule that says he could not, as EPA administrator, take such a rulemaking action just because he (and many others) had previously represented his state in judicial review of the rule. And in any court proceedings after he took office, EPA would be represented by the Department of Justice as counsel, not by Mr. Pruitt,” Stoll said.

Despite that, environmental advocates said they would scrutinize how Pruitt conducts himself as administrator in the cases in which he has previously participated.

“He’s going to have to be a little insulated from that. It may be that some of his assistants have to do that,” Bill Snape, senior counsel at the Center for Biological Diversity in Washington, D.C., told Bloomberg BNA.

Republican Sen. James Lankford (Okla.) said Pruitt would “follow the law.”

“That’s been a lot of the frustration over the last eight years as it seems that EPA is going to find some way to rewrite an old law in a new way and have these novel interpretations that are argued all the way up through the courts and the courts eventually kick out,” he told Bloomberg BNA. Lankford said Pruitt’s active role in “pushing back some of the novel interpretations of the EPA” was “not to try to negate the law, but just to say the administration should follow the law.”

Climate Finding Could Be at Risk

Pruitt has been an ardent opponent of the Obama EPA’s efforts to curb greenhouse gas emissions. In a May column in the National Review co-written with Alabama Attorney General Luther Strange (R), he said that climate change science “is far from settled.”

“Scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind,” Pruitt and Strange said. “That debate should be encouraged—in classrooms, public forums, and the halls of Congress. It should not be silenced with threats of prosecution. Dissent is not a crime.”

Pruitt was among the state attorneys general who had challenged the EPA’s initial finding from 2009 that greenhouse gas emissions pose a threat to public health and the environment and should be regulated under the Clean Air Act.

Though Trump has suggested rolling back major Obama era regulations such as the Clean Power Plan, Patrick J. Michaels, director of the Center for the Study of Science at the Cato Institute, told Bloomberg BNA that Pruitt should go even further and reopen that original decision to regulate.

“You can be sure that Administrator Pruitt is going to reexamine the endangerment finding,” he said.

Though that would spark a new legal battle with environmental advocates, Michaels said the Pruitt pick underscores that Trump is serious about undoing much of the Obama administration's work on climate change.

Heather Zichal, former top energy and climate aide to President Barack Obama and now senior fellow at the Atlantic Council's global energy center, said personnel decisions were important indications of what policies an administration would follow.

"You can meet with Al Gore on Monday, pledge to keep Teddy Roosevelt's environmental legacy alive on Tuesday, but if you nominate the Clean Power Act's leading opponent to head the EPA on Wednesday, you're making an unequivocal statement about the direction of your leadership. Meetings and speeches are quick and easy greenwashing but personnel really counts," she told Bloomberg BNA.

Pruitt Could Tip Scales Toward States

Pruitt has been active in arguing that many EPA regulations—particularly the Clean Power Plan—overstep the agency's authority, interloping on powers reserved to states. His nomination could tilt the balance of power on environmental regulation back to the states.

"I believe the EPA has an important role to play in our republican form of government. There are clearly air and water quality issues that cross state lines and sometimes that can require federal intervention," Pruitt said at a House Science Committee hearing in May. "At the same time the EPA was never intended to be our nation's foremost environmental regulator. The states were to have regulatory primacy."

"Given the depth and extent of Pruitt's activities, he's shown a real commitment to federalism," Jonathan Adler, director of the Center for Business Law & Regulation at the Case Western Reserve University School of Law in Cleveland, told Bloomberg BNA.

Environmental advocates are also concerned about Pruitt's close ties to the fossil fuel industry.

"I think there's a conflict of interest that they're going to have to work on and settle and make sure the new EPA administrator understands the obligation of walking into the Environmental Protection Agency, which is to protect the environment and human health and to base that on science and data and to uphold the integrity of science research," Lisa Garcia, vice president of litigation for healthy communities at Earth justice, told Bloomberg BNA. Garcia is a former adviser to EPA Administrator Gina McCarthy and her predecessor, Lisa Jackson.

But for some Republicans that's just one more selling point for Pruitt.

"I would be disappointed if I found groups that are considered strongly environmental supporting him," Rep. Tom Cole (R-Okla.) told Bloomberg BNA. "That's just not where he's likely to be."

With assistance from Patrick Ambrosio, Brian Dabbs, Rachel Leven, Jonathan Nicholson, Dean Scott and Amena Saiyid in Washington.