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March 26, 2015

## NEWS CLIPS

[National Governors Association Selects PA for Clean Energy Policy Academy](#)

[Pennsylvania Governor Wants New Energy Subsidies](#)

[Underwriting Green Energy Projects Doesn't Pay](#) (PA Manufacturers Association)

[Gov. Wolf's Budget Proposal to Reinvigorate Clean Energy](#) (PennFuture)

[Pennsylvania Lawmakers Dig in on Marcellus Shale Severance Tax](#)

[PUC Seeks Comments on Technical](#)

### **Budget Hearings Continue with Dueling Numbers, Plans, Proposals**

The House Appropriations Committee is finishing its budget hearings, and back in Harrisburg next week, while the Senate continues its annual agency examinations. The Wolf Administration, in interviews and throughout the hearings continued to insist that the proposed budget is a comprehensive plan that has to be evaluated as a whole, and not as individual pieces. Budget Secretary Randy Albright told the Senate that the problems and solutions are all interconnected, but that the targeting proposed by Governor Wolf will make the state more competitive.

Republicans continued to insist that the taxes proposed by Wolf would stifle small businesses, and not provide property tax relief in proportion to new tax revenues raised by the state. Republicans said the proposals would raise taxes in 404 of 500 state school districts, raise taxes by \$8 billion when fully implemented, and return only \$3.6 billion for property tax and rent rebates.

In the hearings themselves, questions focused on agency responsibilities and the cost of Wolf's tax proposals. Some energy related information from the [DEP](#) and [PUC](#) budget hearings can be found below.

By last weekend, both House Republicans and the Wolf Administration had launched dueling websites to help the public see the impact of the newly proposed taxes. The Republican site, <http://www.taxpayersthatpay.com/>, shows net tax increases in 404 of 500 school districts. Meanwhile the Governor's website, <http://www.schoolsthatteach.com> showed impacts on families, rather than individuals, and the Governor himself continued a statewide "Schools that Teach" tour of public schools to promote his education funding proposals.

The Senate and the Governor initiated a series of letters to school districts over the budget as well, with the Senate first warning school administrators against spending funds proposed by the Governor. Wolf upped the ante with a letter to school superintendents from acting Education Secretary Pedro Rivera directing districts to submit spending plans to the state Department of Education by May 15. The House and Senate followed by advising superintendents to check with their lawyers before following the mandate.

[Reference Manual  
Used to Assess Energy  
Savings Attributable to  
Energy Efficiency,  
Demand Side  
Response Measures](#)

[How Republicans Can  
Win Environmentally-  
Friendly Millennials](#)

[BTEC Statement on  
White House  
Executive Order  
Recognizing Thermal  
Energy](#)

[Yes, The US EPA Can  
- And Should - Allow  
Offsets Under The  
Clean Power Plan](#)

["Burning the  
Constitution" -  
Laurence Tribe's  
Energy and Power  
Subcommittee  
Testimony](#)

[Opening statement of  
Energy and Power](#)

[Subcommittee  
Chairman Ed  
Whitfield](#)

[Opening Statement of  
Energy and Commerce  
Committee Chairman  
Fred Upton](#)

[PennEast Pipeline  
Could Save  
Consumers Nearly \\$1  
Billion in Energy  
Costs](#)

Senate Majority Leader Jake Corman said that before any taxes were discussed, pension reform had to be addressed, and said Senate Republicans are considering reducing future benefits for current state and school district workers back to 2001 levels.

In other words, if there is one thing that's certain this spring, the budget will NOT be considered by the General Assembly as a comprehensive plan. Pensions, taxes, liquor control, education funding, formulas, property tax relief, and more are on the plates. And while all are interconnected, each creates its own set of issues that must be resolved. It may be a long summer in Harrisburg.

### **Regional news**

[\*\*Maryland lawmakers pass fracking moratorium\*\*](#)

### **Federal News**

[\*\*Supreme Court appears divided over EPA limits on mercury emissions from power plants\*\*](#)

### **State News**

**Republicans Celebrate 120 in House with White's Philadelphia Victory**

Twenty-six year old Martina White became Philadelphia's second Republican state House member on Tuesday, and the first Republican to pick up a Democratic seat in the city in 25 years. Her election extends GOP control of that chamber to 120-83. White, a financial advisor, won by landslide numbers - a margin of 14 percent - in a 2-1 Democratic district that previously was held by now-Congressman Brendan Boyle, a Democrat. White defeated Democrat Sarah Del Ricci, who was handpicked for the special election by Lt. Gov. Mike Stack III. She was endorsed by several unions, including Philadelphia city police officers, firefighters, blue-collar workers, gas workers, SEPTA employees, and construction workers.

**Wolf to Energy Industry: Let's Make PA "Fertile Ground" To You**

During this year's Globalcon annual conference, held in Philadelphia, Wolf made his pitch that Pennsylvania is the place energy companies should look to locate. "We should be fertile ground for you to come and do your business," Gov. Wolf said in his speech.

Wolf plans to make Pennsylvania increasingly friendly to energy-efficient businesses under his administration, Wolf said. This will be done through his proposed 4 percent reduction in the corporate income tax next year, which now stands at 9.99 percent with an additional 1 percent decrease in 2018, bringing the rate down to 4.99 percent. "I want to signal to the world that we are open for business," Wolf said. The Governor further went on to say he thinks incentives for businesses making clean and efficient energy, such as solar cells, should be a temporary boost to help them gain a foothold and become self-sufficient. "I want you to come here and think this is a place you want to come and do business," he said.

## EVENTS

**March 27, 2015**

### **Making the Utilities' Act 129**

#### **Programs Pay Back for You**

SEDA-COG Breakfast Seminar

PPL Customers

7:30-9:30 a.m.

Country Cupboard

Restaurant

Lewisburg, PA 17837

Cost: \$25

More [information](#)

**April 15, 2015**

### **Agricultural Advisory Board**

9 a.m. until 1 p.m.

DEP Southcentral Regional Office

909 Elmerton Avenue, Harrisburg.

Contact: Tom Juengst,

[tjuengst@pa.gov](mailto:tjuengst@pa.gov).

**April 16-17, 2015**

### **Northeast Biomass Heating Expo 2015**

Cross Insurance Arena  
Portland, ME

More [information](#)

**April 22-23, 2015**

### **Renewable Energy Policy Forum**

The Westin Washington D.C. City Center

Washington, D.C.

To [register](#)

**May 12-13, 2015**

### **Smart Cities 2015**

Charlotte, NC

More [information](#)

**June 2-4, 2015**

### **Energy Ocean Conference & Exhibition**

Portland, Maine,

Contact [Jason Smith](#)

[\(713\) 343-1886](tel:(713)343-1886).

**June 15-18, 2015**

### **2015 BIO International Convention**

Pennsylvania Convention Center, Philadelphia, PA

Global biotech community.

More information available

## **More Details Emerge on Wolf's Marcellus Shale Severance Tax Plan**

Copies of the draft legislative bills needed for Wolf's proposed severance tax have recently been released. At the base of all Wolf's proposed changes is that his tax is based on a sale price of \$2.97 per thousand cubic feet. This is about twice what the sale price was on the Leidy hub March 13, which was \$1.435/Mcf. If gas sells for more than \$2.97/Mcf, the legislation states that the Commonwealth would determine a basic wellhead price for natural gas based on a weighted average of cash prices at Pennsylvania trading hubs located on interstate pipeline system and producers would be assessed 5% of that value plus an additional 4.7 cents/Mcf.

According to the proposed bill, the severance tax will apply to all wells except those referred to as "stripper wells", wells that produce less than 50,000 cube feet in the prior year. Gas withdrawn under terms of a lease and given to the lessor for free would also be exempt.

It would also require producers to procure a severance tax license from the Department of State, however the proposed legislation does not mention what the fee associated with the license would be.

Counties and municipalities already receiving a payout from the severance tax will continue to receive that funding, but the total pot of money will be capped at \$123.2 million.

## **Wolf Supports DRBC Moratorium on Marcellus Drilling**

The Wolf Administration's stance on the exploration and drilling of natural gas continues to be outlined. During the House Appropriations Committee Budget Hearing with the Department of Environmental Protection (DEP), secretary-designee, John Quigley stated that Wolf supports the Delaware River Basin Commission's (DRBC) de facto moratorium on Marcellus Shale drilling in the area. In addition, the DEP and Wolf are asking the General Assembly to approve \$750,000 budget for the DRBC which is almost 73% more than the current state fiscal year's budget.

Those who want drilling in the Delaware Basin are not remaining silent on this issue. Curt Coccodrilli, a leader of the Northern Wayne Property Owners Alliance, says that Wolf "has sided with New Yorkers and people from New Jersey who hate anything industrial about PA." The Northern Wayne Property Owners Alliance, who supports drilling in the DRB, is poised to file a lawsuit once they hear more on Wolf's stance with this issue.

## **Pennsylvania Counties Seek to Keep Impact Fees**

Pennsylvania's County Commissioners Association said this week that keeping the Act 13 impact fee is a top priority, and opposed Governor Wolf's severance tax proposal because it maintains a flat annual payment to counties.

Under Wolf's proposal, the money for local governments would no longer rise and fall with the number of wells drilled and the price of natural gas. Doug Hill, Executive Director of the County Commissioners Association said the organization wants the fee to continue to float, even if it takes the risk that the fee revenue could drop below \$225 million.

at  
[convention.bio.org/register](http://convention.bio.org/register).

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Wolf talked to the Commissioners during their annual meeting in Harrisburg. He said the \$225 million annual payment he is proposing would allow public schools to benefit from the new money that is gathered from the severance tax he wants to impose on the industry with the counties maintaining their current funding.

The majority of the existing impact fee revenue goes to the local governments where the Marcellus Shale wells are drilled. But Wolf said that directing revenue from a bigger severance tax to public schools around the state would give more Pennsylvanians a stake in the industry. He also referred to part of his proposal to use some of the money from the severance tax to help extend natural gas pipelines.

"We want it to work for Pennsylvania and Pennsylvania's economy, not for the economy of Texas or Louisiana or someplace else," Wolf said. "So, to do that, we need to make sure all Pennsylvanians feel partnership, a sense of ownership in this industry and I think a modest severance tax, which I'm proposing, would do that."

### **Quigley Talks Taxes, Regulation, Energy Spending**

Acting DEP Secretary John Quigley spent two days in the last week on the hot seat, with budget hearings before both the House and Senate Appropriations Committees. During those hearings a number of issues were raised over energy related matters. This week, in the Senate, questions included the Governor's proposed severance tax, pipeline siting, drilling regulations, clean air act implementation and renewable energy funding.

Senate Environmental Resources and Energy Committee Chair Eugene Yaw (R, Lycoming) asked Quigley about the source of the \$2.97 per thousand cubic feet floor price for severance taxes determined by the Administration. Quigley responded that this was not a new precedent in Pennsylvania, citing the recent gasoline tax, and noted that the floor was partially drawn up to ensure sufficient funds are available for education funding. Yaw questioned the constitutionality of that process. The two also squared off over the cap that Wolf proposes for impact fees at \$123 million for local impacts.

Sen. Yaw suggested it is perhaps more correct that 49 other states haven't been smart enough to follow the commonwealth's lead with respect to an impact fee. The reality is that a severance tax has its greatest support from regions of the state where there is currently no drilling. Those areas stand to benefit from the tax with little if any local adverse impacts.

In response to questions, Secretary Quigley said there are at least a dozen significant pipeline projects underway in Pennsylvania and said DEP needs to get "out in front," and pledged to work with stakeholders to improve relations and communications with regulators and the public.

Sen. Elder Vogel (R, Beaver) asked for commitment on the part of the administration to keep coal fired generating plants going. "The answer is yes, senator," Quigley said. "The governor is absolutely committed to maintaining the strength of Pennsylvania's coal industry, maintain Pennsylvania's position as a net energy exporter, and to meeting oncoming federal requirements in a way that is Pennsylvania-centric.

Sen. Vogel asked for details on the state's response to the Clean Air Act requirements, and Quigley said that DEP was in the design phase right now,

attempting to meet a moving target. He said that a major stakeholder process was underway, and that the Administration will meet goals while conforming to the laws passed by the General Assembly requiring statewide involvement. Quigley explained the EPA has established a requirement for Pennsylvania to cut its carbon emissions by 31 percent by 2030, and recognized the need to protect the state's legacy energy industries.

Quigley provided details on the alternative energy bond issue that would be financed with a portion of the severance tax funds. Quigley said that the funds would support various types of alternative and renewable energy projects as well as providing \$25 million for "Last Mile," a program to expand access to natural gas. Senators like John Eichelberger (R, Blair) questioned the value of wind generation, which he called "not very efficient." Sen. Yaw also raised the issue of whether solar and wind generation would exist without subsidies.

Quigley said that Pennsylvania needs a balanced energy portfolio, noting the Alternative Energy Portfolio Standards and federal requirements which become more stringent every year. He said, "Every increment of low emission or no emission energy generation is going to be important. While the total amount of energy generated by wind in Pennsylvania is small compared to coal, it is important." Quigley said, "We need to take a serious look at all of the sources and see what provides the most juice." (See News Clips for more takes on these issues.)

### **PUC Hearing**

During its own budget hearing in the Senate, the PA Public Utility Commission (PUC) dealt with questions ranging from fees and taxes to availability of natural gas, pipeline inspections, rail car safety and renewable energy generation.

PUC Chairman Rob Powelson said that the impact fee declining would demonstrate a market signal and decline in drilling activity. Comparing West Virginia's severance tax revenues to Pennsylvania's impact fee Sen. Mario Scavello (R, Monroe) noted that the last three years has shown \$400.6 million in West Virginia, while the impact fee in Pennsylvania has generated \$632.24 million. Powelson said the PUC is agnostic to the impact fee and merely distributes and calculates the fees back to the communities.

During discussions about existing power plants and prices, Powelson said increased access to natural gas has created new potential for reindustrialization of the North East Corridor. Powelson said current shutdowns of power plants has not impacted energy prices, but that there are impacts on local tax bases and jobs, noting that the Clean Energy Plan would make it more difficult to keep fossil fuel based plants running. In terms of natural gas and declining coal generation while complying with the EPA regulations, Powelson said the PUC is expressing its concerns on reliability and affordability to the EPA. Powelson said in the comments given to the EPA, the PUC said that Pennsylvania needs to be recognized for early adoption of clean energy and conservation efforts, and that additional renewable investments will help meet the EPA standards.

Commissioner John Coleman said the PUC has been working with the Center for Rural Pennsylvania to analyze areas where expansion of natural gas pipelines would have maximum benefit. Powelson said 51 percent of Pennsylvanians are natural gas customers, and that without legislation, utilities

are stepping up providing "get gas tariffs" for customers to make the switch to natural gas.

Powelson assured the committee that the PUC will strike an appropriate balance when the net metering regulations are finalized, and said that the Independent Regulatory Review Commission (IRRC) has asked the PUC to seek additional comment. Agricultural biodigesters are one renewable energy system that will benefit from new metering.

Powelson was asked about Governor Wolf's proposed \$225 million fund for clean energy projects and how that might affect the AEPS. Powelson said many resources are being devoted to complying with the EPA Clean Energy Plan, and that the federal government was not recognizing Pennsylvania's early efforts that have led to major steps in emissions reductions.

In response to questions, Powelson said the enactment of the AEPS and efforts to support renewable energy will help in compliance with the Clean Energy Plan.

[Back to top](#)

## **Regional news**

### **Maryland lawmakers pass fracking moratorium**

Maryland's House of Delegates passed a bill that would put a three-year moratorium on hydraulic fracturing in the state.

Tuesday also saw Maryland's Senate pass a bill that would hold any companies fracking in the future to strict standards, labeling the practice "an ultra-hazardous and abnormally dangerous activity," the Baltimore Sun [reports](#).

Each chamber would have to pass the other's bill in order for them to move forward, and they both face uncertainty on the desk of Gov. Larry Hogan (R) who supports fracking in the economically depressed western portion of Maryland.

Former Gov. Martin O'Malley (D) put the state under an effective fracking moratorium to study the issue, and it remains in place, despite the desires of western Maryland to take advantage of the Marcellus shale play.

"This bill is about ... when there are problems, when there's contamination, when someone is injured, who pays," said Sen. Bobby Zirkin (D), the sponsor of the Senate bill, according to the Sun.

Zirkin's bill would make frackers responsible for all contamination and environmental problems, even if they follow the regulations. They would also have to have \$10 million in insurance.

Western Maryland lawmakers criticized the measures, with one saying that the legislature is "putting the cart before the horse," and another saying it's an inherently local issue, the Sun said.

### **Supreme Court Asks Solicitor General to Review NJ's Plan to Subsidize Power Plants**

The U.S. Supreme Court this week asked the solicitor general to weigh in on a case in which New Jersey sought to build new power plants with subsidies

from utility customers, an action that was rejected by both federal courts and the Federal Energy Regulatory Commission (FERC).

The fact that the government has decided to review the case is a bit of a surprise; the lower court ruled that the New Jersey effort -- and a similar attempt by Maryland -- are preempted by federal law, which gives sole jurisdiction to the FERC.

New Jersey has some of the highest electric rates in the country, and the Christie administration, and state Legislature, passed a law offering subsidies from ratepayers to help build new natural-gas power plants. The rationale behind the proposal was that it would help drive down electricity costs for consumers and businesses, even with the subsidies.

The law led to extensive litigation, with opponents winning with the courts and regulatory agencies. Two of the three developers who were awarded subsidies went ahead with plans to build the units even without the grants.

### **NYSERDA Begins Efforts to Reduce Costs of Installing Solar Panels**

When determining whether solar panels are a cost effective property addition, the benefits don't always outweigh the cost.

John Rhodes, NYSERDA president and CEO, believes property owners "need a sweetener from the state but they need a sweetener from the state because costs are higher than they need to be. The costs are higher than they need to be in ways that we understand and the industry understands. The New York Sun program is on a path to reduce the need for incentives by reducing the underlying cost."

NYSERDA has designed a program, the New York Sun, to reduce what are termed the 'soft costs' of photovoltaic installation. Soft costs include items such as the cost of doing the design, getting the permits, and arranging the financing.

[Back to top](#)

## **Federal News**

### **Supreme Court appears divided over EPA limits on mercury emissions from power plants**

The Associated Press reported Wednesday that the Supreme Court's conservative justices cast doubt Wednesday on the Obama Administration's regulations to reduce power plant emissions of mercury and other hazardous air pollutants.

The court appeared to be divided over a challenge brought by industry groups and 21 states to the EPA's decision to take action against coal- and oil-fired power plants.

Several justices questioned whether EPA was required to take costs into account when it first decided to regulate hazardous air pollutants from power plants, or whether health risks are the only consideration under the Clean Air

Act. The EPA said it factored in costs at a later stage when it wrote standards that are expected to reduce the toxic emissions by 90 percent. The rules begin to take effect next month and are supposed to be fully in place in 2016.

The AP said that Justice Antonin Scalia was critical of the agency's reading of the provisions of the anti-air pollution law at issue in the case throughout 90 minutes of arguments. "It's a silly way to read them," Scalia said.

The court's four liberal justices appeared more comfortable with EPA's position, leaving Justice Anthony Kennedy as the possible decisive vote. Kennedy at one point said the law appeared to give EPA the leeway to regulate pollutants based only on their harm. But he later said that once a decision to regulate is made without consideration of cost, "at that point the game is over."

The administration and its allies told the justices that EPA followed the same process in deciding whether to regulate other sources of emissions, including from motor vehicles, which in the case of a loss on this court decision, could yield other lawsuits on other regulations.

The administration is seeking to use the Clean Air Act for the first time to control mercury and carbon pollution from the nation's power plants. Numerous states have already filed challenges to a proposed rule to curb pollution from coal-burning plants. And Congress is working on legislation to allow states to opt out of any rules clamping down on greenhouse gases.

The costs of installing and operating equipment to remove the pollutants before they are dispersed into the air are hefty - \$9.6 billion a year, the EPA found. But the agency said the benefits are much greater, amounting to between \$37-\$90 billion annually, with savings coming from prevention of up to 11,000 deaths, 4,700 nonfatal heart attacks and 540,000 lost days of work.

Shuttering older plants or installing pollution-control equipment also will reduce emissions of particulate matter, such as dust, dirt and other fragments associated with a variety of respiratory ailments. The administration said it properly took those benefits into account, but the challengers argued that they are not relevant to the case. Chief Justice John Roberts called the inclusion of those other benefits an "end run" around more stringent procedures EPA would have to follow to try to reduce emissions of particulate matter.

### **Obama signs executive order on federal energy targets**

On March 19, President Obama issued a new executive order focused on planning for federal sustainability over the next decade. This new plan directs federal agencies to reduce greenhouse gas (GHG) emissions by 40 percent by 2025.

Beginning in federal fiscal year (FFY) 2016, each agency head will be charged with promoting energy efficiency in all buildings and will be required to ensure that a minimum percentage of total building electric energy and thermal energy be clean energy. The requirement is set at 10 percent in FFY 2016 and 2017, 13 percent in FFY 2018 and 2019, 16 percent in FFY 2020 and 2021, 20 percent in FFY 2022 and 2023 and 25 percent by FFY 2025 and thereafter.

The order further sets minimums on the amount of renewable energy that must be consumed in federal buildings. The requirements begin at 10 percent in FFY 2016 and 2017 and increase by 5 percent every two years through FFY



2023. By FFY 2025, the requirement stands at 30 percent thereafter.

Attaining the above mentioned targets can be achieved through several ways including the installation of renewable energy systems onsite at federal facilities to produce electricity and/or thermal energy and retaining or obtaining renewable energy credits (RECs), contracting for the purchase of energy that includes installation of renewable energy onsite, installing combined-heat-and-power (CHP) systems onsite at federal facilities. All agencies must meet certain federal mandates when acquiring and procuring renewable energy systems, including the USDA's BioPreferred program.

### **Obama's former law professor joins legal attack on EPA rule**

In the continued effort to thwart Obama's proposed EPA ruling to cut carbon dioxide emissions from power plants, opponents are turning to Laurence Tribe, the man who taught constitutional law to Obama while he attended Harvard Law School.

Tribe has also submitted comments on behalf of Peabody Energy against the Clean Power Plant rule to EPA last December. Tribe also represented Al Gore in *Bush v. Gore*. "You know, I've cared about the environment ever since I was a kid. And you know, I taught the first environmental course in this country, and I've won major victories for environmental causes. But I'm committed to doing it within the law," Tribe said.

Of his former student, Tribe accuses Obama of "burning the Constitution" as he tries to combat climate change during his administration.

Not everyone is happy with Tribe signing on against the proposed EPA ruling. David DiMartino, adviser to the Climate Action Campaign, said, "Laurence Tribe must not have been sworn in over a Bible today before testifying before Congress, because if he had been, that Bible would have burst into flames after his phony testimony about EPA's legal authority to set standards for unlimited carbon pollution from power plants."

### **Energy and Power Subcommittee Continues Oversight of EPA's "Power Grab" with Review of Legal and Cost Issues**

The Energy and Power Subcommittee, chaired by Rep. Ed Whitfield (R-KY) today continued its oversight of EPA's Proposed 111(d) rule for existing power plants, referred to by the agency as the "Clean Power Plan." Today's hearing examined the legal and cost issues of the rule and featured testimony from leading legal scholars and state regulators.

"Given the constitutional, statutory, and other legal issues surrounding the Clean Power Plan, I don't believe it will withstand judicial scrutiny. Given the tight deadlines under the proposed rule, states will be facing a decision about whether to submit their plans and initiate costly steps toward compliance before judicial review is complete. This would be unfortunate, because whether or not the Clean Power Plan is bad law, it certainly is bad policy," said Chairman Whitfield.

Noted legal scholar Laurence Tribe, President Obama's constitutional law professor at Harvard Law School, described the constitutional violations of EPA's rule. He asserted, "EPA lacks the statutory and constitutional authority to adopt its plan" and described EPA's plan as a "power grab" from the states,

Congress, and the judicial branch. "EPA is attempting an unconstitutional trifecta: usurping the prerogatives of the States, Congress and the Federal Courts - all at once. Much is up for grabs in this complex area. But burning the Constitution of the United States - about which I care deeply - cannot be part of our national energy policy," expressed Tribe.

Legal expert Allison Wood, Partner at Hunton & Williams LLP, explained the many "legal deficiencies" with EPA's proposed rule, including whether EPA has the authority under section 111(d) to regulate sources that are already regulated under another section of the Clean Air Act as well as EPA's attempt to redefine regulated sources under the law. "EPA's proposed section 111(d) rule suffers from many legal infirmities and violates the Clean Air Act," said Wood. "The rule essentially requires a complete overhaul of each state's energy portfolio. In addition, many states are going to have to enact laws and regulations to enable them to do the things contemplated by the proposed rule. All of this will be completed before litigation over the rule is complete. If the rule is ultimately held to be unlawful, the states will have already expended enormous amounts of resources to develop the plan, and any laws or regulations that have been enacted cannot be easily reversed."

Secretary of the North Carolina Department of Environment and Natural Resources Donald van der Vaart warned of repercussions for states due to the rule's "legal frailty." He said, "The potential for the 111(d) rule to have this whipsaw effect on states is particularly dangerous because of the scope of the proposed 111(d) rule. There is one tenet on which nearly all stakeholders agree - the 111(d) rule will fundamentally restructure both how energy is generated and consumed in America. I would argue that the EPA's section 111(d) is to energy what the Affordable Care Act is to healthcare. Like the ACA, the proposed 111(d) rule is an attempt to impose a one size fits all solution that will transform the nation's energy system. This fundamental change to America's electricity model will come at the hands of a rule that few consider legally firm. Even the EPA has acknowledged the rule is not likely to survive a judicial challenge intact."

Art Graham, Chairman of the Florida Public Service Commission, expressed concern over the assumptions in EPA's proposal, noting that the rule "unfairly penalizes Florida for having taken actions that reduced CO2 emissions prior to EPA's 2012 baseline year." He said, "The proposal does not recognize the Florida specific circumstances, such as prior actions and difficulties in complying with the proposal, that create large cost impacts on the ratepayers in our state."

Craig Butler, Director of the Ohio Environmental Protection Agency, added, "As Ohioans discuss this issue, we hear one overriding concern; that maintaining affordable, reliable power is critical to both the pocket books of Ohioans and the continued economic development within the state. Ohio has been a manufacturing hub in the heart of the country since the industrial revolution. Fueled by electricity, which remains 9 percent below the national average, Ohio is home to a broad range of energy-intensive industries and is competitive in the national and global marketplace. The Clean Power Plan, with all its legal and technical flaws, presents a direct threat to these benefits to Ohio consumers."

"Under the Clean Power Plan, states would be forced to redesign their electricity generation, transmission, and distribution systems and related laws and policies, and to do so over a short timeframe. Longstanding policies would

be essentially 'wiped clean,' and jobs and family budgets could suffer as a result," concluded Full Committee Chairman Fred Upton (R-MI). "Jobs and the economy. That remains our focus. We will continue working to keep the lights on and the electric bills affordable."

### **EPA Official Apologizes to Farmers For Exclusion in Clean Water Act**

At the National Farmers Union in Wichita, KS last week, EPA Administrator Gina McCarthy apologized to farmers for not including them in discussions on the proposed changes to the Clean Water Act.

McCarthy spoke of the now-rescinded "Interpretive Rule" - a federal mandate that outlined 56 conservation practices that gave farmers an exemption from the Clean Water Act.

Prior to this rule, the environmental practices outlined were voluntary. Farm groups argued that this mandate could change the way they interacted with the Natural Resources Conservation Service and was just another show of government overreach.

"I apologize for not doing this the right way in the beginning but I emphasize that in no way precludes us from getting this job done and getting it done right," McCarthy said. She further went on to say that the Rule was rescinded because it "created more confusion and had a lot of people upset and worried that it would limit ag activities,"

The EPA is currently working on sending the new rule to the Office of Management and Budget and will clearly define what constitutes a tributary whereas the previous version did not.

[Back to top](#)