

From: POLITICO Pro Energy
To: megan_bloomgren@ios.doi.gov
Subject: Morning Energy, presented by Business Roundtable: Pruitt visits Chicago-area Superfund site today — Trump administration seeks pause on two more air rules — Tight squeeze to get RFS done on time — Public hearing dates set for Keystone
Date: Wednesday, April 19, 2017 4:53:33 AM

By Anthony Adragna | 04/19/2017 05:46 AM EDT

With help from Anca Gurzu, Darius Dixon, Annie Snider and Ben Lefebvre

PRUITT'S ON THE MOVE AGAIN: EPA Administrator Scott Pruitt heads to the Chicago area today where he'll tour a lead cleanup project. The USS Lead Superfund site in East Chicago, Ind., [gained national attention](#) last summer when some 1,000 public housing residents were forced from their homes after tests showed high levels of lead and arsenic. Pruitt is the first EPA administrator to visit the site itself, and today's trip aligns with his emphasis on the Superfund program as part of the agency's core mission. Indiana Gov. Eric Holcomb's office said Pruitt will participate in a private briefing with local elected officials and community groups at the site, along with Sens. [Joe Donnelly](#) and [Todd Young](#) and Rep. [Pete Visclosky](#). They'll hold a public availability afterward at 1 p.m. CST.

The trip comes after Pruitt was spotted Tuesday... in Oklahoma. Gov. Mary Fallin [tweeted](#) a picture after meeting with him. The agency did not respond to requests for what else Pruitt was up to in his home state.

Pumping the brakes on two more: Late Tuesday, President Donald Trump's administration asked a federal appeals court to halt oral arguments over two controversial Obama-era EPA regulations. Arguably the more consequential of the two is the request to postpone oral arguments scheduled for May 18 before Judges Janice Rogers Brown, Sri Srinivasan and Thomas B. Griffith over a key part of the Obama administration's power plant mercury rule. As Pro's Alex Guillén [reports](#), a court decision to grant the request, which environmental groups plan to fight, would allow an easier path for the Trump administration to review and potentially revise or repeal the regulation. The administration also asked the D.C. Circuit to delay oral arguments over a 2015 rule that required 36 states to rewrite their plans to remove provisions giving sources like power plants and refineries a lawsuit "shield" for excess pollutants emitted during periods of startup, shutdown or malfunction. Alex has more on this requested delay for the rule known as the "SSM SIP call" [here](#). It's worth noting that the court has already granted similar Trump administration request to delay arguments in lawsuits over its [carbon rule](#) for future power plants and the 2015 [ozone standard](#).

Back in Washington today, EPA officials will hold a two-hour-long confab at the agency's headquarters this afternoon with groups representing state and local officials to solicit their "input and wisdom" on the planned rewrite of the Waters of the U.S. rule. In a [letter](#) extending the invitation last week, Pruitt said the consultation is a priority "to both myself and President Trump." But don't expect unanimity from attendees: States were fiercely divided on the Obama administration's rule, with more than 30 filing suits against it, while others sided with EPA in support of the rule. Meanwhile, some of the associations that were invited to the meeting represent a specific set of interests in states — for instance, sewer administrators and wetlands managers — whose stake in the rule could differ from their governor's or even each other's.

RESCHEDULED: The White House said a scheduled meeting between senior Trump advisers on the Paris climate accord [was postponed](#) because many of the attendees wanted to accompany the president to Wisconsin, but promised it would be rescheduled. "That date has not been set when it will be, but it will be scheduled at some point over the next couple of weeks," Deputy Press Secretary Sarah Huckabee Sanders told reporters.

The delay comes amid divisions over Paris inside the White House, among Republican lawmakers and within the business community. But Sanders said the delay had nothing to do with those disagreements. Just before the meeting was canceled, a dozen Republican lawmakers led by West Virginia Rep. [David McKinley](#) sent Trump a letter urging him to withdraw from the accord altogether. That followed appeals from several major oil and coal companies telling Trump to stick with the agreement but adjust the U.S. emissions-reduction pledge.

WELCOME TO WEDNESDAY EVERYONE! I'm your host Anthony Adragna, and Tesoro's Stephen Brown was first to identify Lincoln as the president who ran with the slogan "Don't Swap Horses in the Middle of the Stream." For today: Whose slogan was the Washington-appropriate "Cox and Cocktails"? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter [@AnthonyAdragna](#), [@Morning_Energy](#), and [@POLITICOPro](#).

SPRINT IS ON FOR RFS: It's going to be a tight squeeze if the Trump administration intends to meet the annual deadline to issue the Renewable Fuel Standard mandates, but most observers still believe it can be done by the Nov. 30 deadline, Pro's Eric Wolff [reports](#). "EPA has repeatedly committed to the timely promulgation of the rules implementing the RFS, and I have every expectation they will meet the statutory requirement," said Bob Dinneen, CEO of the Renewable Fuels Association, an ethanol producers group.

To get its final 2018 biofuel-volumes rule out on time, EPA would likely have to issue a proposed rule by late May but OMB hasn't yet received anything to review, making that time frame unlikely. Ethanol and oil refining sources tell Eric they've been told the proposed rule could slip to early June, which they believe still allows EPA to issue the final Renewable Volume Obligations in time to meet the deadline. The RFS rule would also seem to be a test of Trump's two-for-one deregulatory executive order, though there's some thought it falls under an exception under OMB guidance. It's worth remembering that the Obama EPA missed the annual deadlines regularly, though it did issue last year's rule on time.

KEYSTONE PUBLIC MEETINGS SET: The Nebraska Public Service Commission set aside a whopping 10 hours on May 3 for public comment on whether the controversial Keystone XL pipeline should be allowed its requested route through the state. Those wanting to speak their minds at the Holthus Convention Center in York, Neb. will have up to five minutes each at the microphone, but get there early — comment will be allowed on a first-come, first-served basis. The state commission is the last regulatory body to weigh in on the pipeline project the Trump administration approved last month, and it may decide to set aside a second public comment date, according to its public notice. It will then hold a public hearing on the pipeline's application during the second week of August before issuing its final decision later in the year.

CARPER QUESTIONS PRUITT'S WOTUS PLANS: Top Senate EPW Democrat [Tom Carper](#) asked Pruitt to disavow any discussions among some industry groups about whether the agency could hire private lawyers to rewrite the Waters of the U.S. regulation, Pro's Annie

Snider [reports](#). It comes after POLITICO [reported](#) that some industry groups with close ties to Pruitt are exploring whether EPA could outsource work on the contentious regulation. In response, EPA spokeswoman Liz Bowman said: "To my knowledge, we are not contracting with an outside firm at this time for WOTUS."

EXAMINING TRUMP'S FIRST 100 DAYS ON THE ENVIRONMENT: Senate Minority Leader [Chuck Schumer](#), Massachusetts Attorney General Maura Healey and former Obama climate adviser Carol Browner participate in a call with the League of Conservation Voters today at noon to examine the environmental and public health impacts of the first 100 days of the Trump Administration. They'll also urge citizens to participate in the Peoples Climate March on April 29 (which happens to be Trump's 100th day).

**** A message from Business Roundtable: Create, Grow, Sustain: Delivering Shared Success** - Explore how companies are promoting sustainable practices in their U.S. and global operations in "Create, Grow, Sustain: Delivering Shared Success." Celebrating its 10th anniversary, the report highlights how America's largest companies make sustainable business investment a priority in supporting economic growth and job creation. <https://goo.gl/nm4Dy9>
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NOT YOUR AVERAGE CLIMATE RALLY: A diverse array of religious leaders will gather outside the White House today at 10:30 a.m. to offer a moral call for the Trump administration to take action to address climate change. They'll wear air filter masks over their traditional garments to stress how they worry rolling back environmental protections will endanger human health.

BLAST FROM THE PAST: Former Vice President Al Gore and former EPA Administrator (and current senior Apple official) Lisa Jackson are holding [a conversation](#) on "climate optimism" today at 7 p.m. PST. It'll take place at Apple's Union Square store in San Francisco.

SHUTDOWN CHECK IN: Schumer said Tuesday talks have been going swimmingly with GOP leaders behind closed doors to fund the government, but warned the White House against any last-minute plays that could grind negotiations to a halt. "If the president doesn't interfere and insist on poison pill amendments to be shoved down the throat of Congress, we can come to an agreement," Schumer said. "I want to come to an agreement" (h/t [Budget and Appropriations Brief](#)).

NUCLEAR STORAGE FIRM ASKS NRC FOR PAUSE: Waste Control Specialists has asked the NRC to put its application to store high-level nuclear waste at its Texas facility on hold, the San Antonio Express-News [reports](#). WCS has been in merger talks with Energy Solutions, which specializes in low-level nuclear waste, for several months and now wants to wait until the deal is completed before moving further with the new storage license. "WCS expects to go forward with this project at the earliest possible opportunity after completion of the sale," WCS CEO Rod Baltzer said in a letter to the NRC. The sale isn't a sure thing since the Justice Department [sued the two companies](#) last fall in order to block Energy Solutions' \$367 million purchase saying that "eliminating competition between ES and WCS would have wide-ranging effects throughout the United States."

ANOTHER SCIENCE CONTENDER EMERGES: Michelle Lee, director of the Commerce Department's U.S. Patent and Trademark Office and undersecretary of commerce for intellectual property, is in the running to head up the White House Office of Science and Technology Policy, according to sources familiar with the job search. Lee worked in the

Obama administration. Earlier in her career she worked for Google as deputy general counsel, and the company's first head of patents and patent strategy. Lee didn't respond to requests for comment and the White House did not have any comment in time for publication (h/t POLITICO Playbook).

MAIL CALL! TIME TO GET REAL ON IG VACANCIES: Every senator on the Homeland Security and Governmental Affairs Committee [wrote Trump](#) asking him to fill a host of federal inspectors general vacancies, including those for the Interior and Energy Departments. "While many acting IGs have served admirably in the absence of permanent leadership, the lack of a permanent leader threatens to impede the ability of these offices to conduct the oversight and investigations necessary," the bipartisan group of senators wrote.

NATIONAL MONUMENT PROTECTION URGED: The chairs of the Congressional Tri-Caucus, composed of the Congressional Asian Pacific American Caucus, the Congressional Black Caucus and the Congressional Hispanic Caucus, sent [a letter](#) to congressional leaders Tuesday urging them to oppose any efforts to limit presidential authority to declare national monuments under the Antiquities Act or alter existing monumental boundaries. "Any attempt to curtail the President's authority to protect these places or to remove protections already put in place by other Presidents is an attack on our shared history," Reps. [Michelle Lujan Grisham](#), [Cedric Richmond](#) and [Judy Chu](#) wrote.

REPORT CALLS FOR BETTER FED-STATE CYBER PLANS: State and federal agencies still need to better lay out each of their roles and responsibilities in the event of a cyberattack that knocks out energy infrastructure for an extended period of time, a new [Energy Department report](#) finds. The 25-page report summarizes a multi-state exercise in December that looked at how different agencies might respond to a massive power outage that also knocked oil refineries offline. It included several findings concerned with gaps in communication between agencies, as well as with the public. "DOE should identify opportunities to best align and communicate coordination procedures with states and industry for cyber incidents in the energy sector," the report recommends. It also urges DOE to help state regulators develop new ways of determining what kind of cybersecurity expenses utilities can pass on to their customers, and says there's "a need to improve state petroleum response plans." The report was prepared by the National Association of State Energy Officials and DOE's Office of Electricity Delivery and Energy Reliability.

MOVERS, SHAKERS: Former League of Conservation Voters spokesman Seth Stein has become deputy press secretary for New York Mayor Bill de Blasio; his portfolio includes issues concerning immigration, child services and sustainability and resiliency.

Former EPA spokeswoman **Melissa Harrison** has joined the corporate and public affairs group at Ogilvy Washington; her portfolio will include sustainability and others issues.

REPORT: HEAVY FUEL OIL TOO RISKY FOR ARCTIC: The risks of using heavy fuel oil (or HFO) in Arctic shipping outweigh the benefits, according to a [new study](#) published Tuesday by the International Council on Clean Transportation. HFO represents the leftover residues from the crude oil refining process. The study, commissioned by the European Climate Foundation, found that transitioning to alternative fuel sources such as liquefied natural gas or distillates by 2025 would bring both financial and environmental advantages to the shipping industry. HFO currently powers 44 percent of shipping vessels in the Arctic. "HFO may be cheap, but it's seven times more expensive to clean up than distillate fuel," Bryan Comer, researcher at ICCT's marine program, said in a statement. "It seems prudent,

therefore, to seriously consider eliminating HFO in the Arctic."

QUICK HITS

- Big Oil's Rejection of Silicon Valley Is Finally Coming to End. [Bloomberg](#).
- Lamborn pens letter urging EPA to drop lawsuit against Colorado Springs. [KRDO](#).
- "The Ocean Is Boiling": The Complete Oral History of the 1969 Santa Barbara Oil Spill. [Pacific Standard](#).
- When Rising Seas Transform Risk Into Certainty. [New York Times Magazine](#).
- Environmental group asks court to block work on Pinelands pipeline until appeals are heard. [Philly.com](#).
- Oil slides more after U.S. settlement on API inventory report. [Reuters](#).

HAPPENING TODAY

8:30 a.m. — "[AI for Earth: Developing Data-Driven Solutions for Biodiversity Conservation](#)," Microsoft Innovation & Policy Center, 901 K Street, NW, 11th Floor

8:30 a.m. — 2017 Global Development [Forum](#), Center for Strategic and International Studies, 1616 Rhode Island Avenue, NW

9:00 a.m. — The Atlantic Council hosts a discussion about how energy innovation and entrepreneurship in the government and private sector are reshaping the Middle East, 1030 15th Street NW, 12th Floor

12:00 p.m. — "[Energy and Environmental Reform: Conservative Perspectives for the Trump Administration](#)," R Street Institute, 2045 Rayburn

1:00 p.m. — "Momentum Shift: Creating Markets for Advanced Energy at the State Level," Advanced Energy Economy, Webinar registration [link](#).

THAT'S ALL FOR ME!

**** A message from Business Roundtable: Create, Grow, Sustain: Delivering Shared Success** - For the past ten years, business leaders have been coming together to speak on the importance of the environment and our responsibility to each other in Business Roundtable's sustainability reports. In that time, we've made great strides in our commitment the environment, the communities in which we do business and our people. Explore how companies are promoting sustainable practices in their U.S. and global operations in "Create, Grow, Sustain: Delivering Shared Success:" <https://goo.gl/BjUBmh> **

To view online:

<https://www.politicopro.com/tipsheets/morning-energy/2017/04/pruitts-visits-chicago-area-superfund-site-today-022416>

Stories from POLITICO Pro

EPA asks court to delay arguments in mercury challenge [Back](#)

By Alex Guillén | 04/18/2017 06:40 PM EDT

EPA today [asked](#) the D.C. Circuit Court of Appeals to postpone next month's oral arguments over a key part of the Obama administration's power plant mercury rule.

If the court grants the request, it would open an easier path for the Trump administration to review and potentially revise or repeal the regulation.

The court is due to consider challenges to EPA's 2016 supplemental finding that it was, in fact, "appropriate and necessary" to regulate mercury emissions from power plants. The new finding was designed to address the flaw identified by the Supreme Court in 2015, and had the practical effect of keeping the mercury rule in place.

Arguments are scheduled for May 18 before Judges Janice Rogers Brown and Thomas B. Griffith, both George W. Bush appointees, and Sri Srinivasan, an Obama appointee.

Environmental groups plan to oppose EPA's request.

A major part of critics' case against the supplemental finding was EPA's use of co-benefits derived from incidental reductions in particulate matter pollution, which provided tens of billions of dollars' in benefits. Direct, quantifiable benefits from the mercury reductions yielded just a few million dollars, significantly less than the costs to industry.

All coal-fired power plants have been in compliance with the rule since last year, though the challengers argue overturning the mercury rule could allow utilities to save millions by turning off those pollution controls.

The D.C. Circuit previously granted similar requests from EPA to delay arguments in lawsuits over its [carbon rule](#) for future power plants and the 2015 [ozone standard](#). EPA earlier today [asked](#) to delay arguments in another Clean Air Act case.

WHAT'S NEXT: The court must decide whether to delay arguments and give EPA a path to tweak or repeal the mercury rule.

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EPA asks court to postpone arguments in Clean Air Act case [Back](#)

By Alex Guillén | 04/18/2017 06:16 PM EDT

EPA today [asked](#) the D.C. Circuit Court of Appeals to postpone oral arguments over a 2015 rule that required many states to rework their Clean Air Act compliance plans.

The Trump administration said it needs time to review the regulation, known as the "SSM SIP call." The rule required 36 states to rewrite their plans to remove provisions giving sources like power plants and refineries a lawsuit "shield" for excess pollutants emitted during periods of startup, shutdown or malfunction, known as an "affirmative defense."

The SIP call's challengers, including 20 states and various industry groups and companies, argued that EPA is misinterpreting the law and that sources could then be held liable for

emissions during unpreventable breakdowns.

Texas in March filed a new petition with EPA seeking reconsideration of the SIP call, the agency said in today's filing.

Environmental groups oppose delaying arguments, as does one of the suing states — Delaware, which joined the other states on a narrow issue involving its specific state plan's treatment of pollution during startup and shutdown, but not malfunctions.

Arguments are currently scheduled for May 8 before Chief Judge Merrick Garland, a Clinton appointee, and Judges Patricia Millett and Robert Wilkins, both Obama appointees.

The D.C. Circuit previously granted similar requests from EPA to delay arguments in lawsuits over its [carbon rule](#) for future power plants and the 2015 [ozone standard](#).

WHAT'S NEXT: The court must decide whether to delay the May 8 oral arguments.

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Court cancels arguments over carbon rule for future plants [Back](#)

By Alex Guillén | 03/30/2017 04:08 PM EDT

The D.C. Circuit Court of Appeals today [canceled](#) oral arguments over EPA's carbon rule for future power plants that had been scheduled for April 17, but did not stay the overall case.

Dropping the arguments will give the court time to brief and consider the Justice Department's Tuesday request to freeze the case in the wake of President Donald Trump's executive order directing EPA to review and likely repeal the rule.

Oral arguments for the rule's sister regulation, the Clean Power Plan, which governs existing power plants, took place in September. It remains unclear whether the court will acquiesce to the Trump administration's request to freeze that case as well.

The states and companies challenging the rule earlier today [told the court](#) they support pausing the suit. They point out that the rule was never stayed and remains in effect as litigation plays out and EPA reviews the regulation. The states and environmental groups supporting the rule have signaled they will file briefs opposing DOJ's request.

WHAT'S NEXT: EPA, its challengers and the states and environmental groups supporting the future plant rule will issue briefs the Justice Department's abeyance motion, and the court will decide whether to grant it.

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Court suspends ozone case, opening path for Trump admin to rewrite rule [Back](#)

By Alex Guillén | 04/11/2017 06:16 PM EDT

The D.C. Circuit Court of Appeals today decided to suspend proceedings in a lawsuit over an Obama-era ozone rule to give the Trump administration time to decide whether to rewrite it.

A three-judge panel granted EPA's request to postpone oral arguments that had been scheduled for April 19 over the 2015 ozone standard. The court also [ordered](#) EPA to provide updates every 90 days on its progress in reviewing the standard and to notify the court "promptly" once the agency decides whether to repeal or modify it.

The court also recently canceled oral arguments over EPA's carbon rule for future power plants, although it has yet to decide whether to place that case on hold.

WHAT'S NEXT: EPA will review the ozone standard and decide whether to alter or repeal it, a lengthy notice-and-comment process.

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White House advisers postpone Paris climate deal meeting [Back](#)

By Andrew Restuccia | 04/18/2017 11:12 AM EDT

President Donald Trump's most senior advisers postponed a meeting Tuesday during which they had hoped to bridge the administration's divide over [whether the U.S. should remain](#) in the Paris climate change agreement.

The fate of the agreement, backed by nearly 200 nations in 2015, has become a major symbolic policy question for a president who has dismissed human-caused climate change as a hoax and promised to revive the U.S. coal industry. The agreement also stands as one of former President Barack Obama's most significant accomplishments on combating global warming.

A White House aide said the meeting was being rescheduled because several Trump advisers were traveling with the president to Wisconsin on Tuesday. White House spokeswoman Sarah Sanders told reporters that the meeting will be rescheduled in the "couple of weeks."

Sanders said the meeting was not canceled as a result of discord over the Paris deal among Trump's advisers.

But several of Trump's most senior advisers are deeply divided on whether the United States should stay in the agreement, despite broad consensus in the administration for rolling back the Obama administration regulations aimed at achieving sharp reductions in U.S. greenhouse gas output.

Chief White House strategist Steve Bannon and EPA Administrator Scott Pruitt have called for the U.S. to withdraw from the agreement, while other Trump advisers such as his senior adviser and son-in-law Jared Kushner are said to support staying. Other advisers who had been expected to attend Tuesday's meeting included National Economic Council Director Gary Cohn, Secretary of State Rex Tillerson, National Security Adviser H.R. McMaster and Energy Secretary Rick Perry, administration officials told POLITICO last week.

The advisers hope to make a recommendation to the president, who is expected to issue a final verdict on the pact by late May.

Administration officials who want to stick with the Paris deal have argued behind the scenes that the agreement is not legally binding and will not hobble Pruitt's effort to undo Obama's climate rules. Some aides have also argued that remaining in the pact will give the U.S.

leverage to win greater support for technology to reduce pollution from the use of coal and other fossil fuels.

But opponents of the Paris agreement are still amping up their calls for Trump to withdraw from the accord, including 12 House Republicans who made their plea in a letter to the president Tuesday.

"As you contemplate the United States' continued involvement in the Paris Climate Agreement, we would like to express our support for a complete withdrawal from the deal," [wrote](#) the lawmakers, led by [David McKinley](#) of West Virginia and [Paul Gosar](#) of Arizona.

Rep. [Kevin Cramer](#) (R-N.D.), who has Trump's ear on energy policy, has been circulating a letter supporting staying in the Paris agreement with a much-reduced carbon commitment. But he has not yet sent it or divulged how many lawmakers are joining him on it.

Eric Wolff contributed to this report.

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12 House Republicans ask Trump to exit Paris climate deal [Back](#)

By Eric Wolff | 04/18/2017 12:19 PM EDT

A dozen Republican members of the House are calling on President Donald Trump to withdraw from the Paris climate agreement.

"As you contemplate the United States' continued involvement in the Paris Climate Agreement, we would like to express our support for a complete withdrawal from the deal," the lawmakers wrote today in a [letter](#) to Trump obtained by POLITICO.

Reps. [David McKinley](#) (W.Va.) and [Paul Gosar](#) (Ariz.) led the Republicans in sending the letter today as top White House officials were set to meet to discuss the deal, though the meeting was [delayed](#).

The Republican lawmakers echo EPA Administrator Scott Pruitt's argument that the deal will be used to defend the Clean Power Plan, though legal experts [are skeptical](#). They also say the deal allows China and India, two of the top carbon emitters in the world, to increase emissions while the US would have to hamstring its own economy.

Reps. [Andy Barr](#) (Ky.), [Morgan Griffith](#) (Va.), [Evan Jenkins](#) (W.Va.), [Alex Mooney](#) (W.Va.), [Jim Sensenbrenner](#) (Wis.), [Liz Cheney](#) (Wyo.), [James Comer](#) (Ky.), [Louie Gohmert](#) (Texas), [Andy Biggs](#) (Ariz.), and [Tom McClintock](#) (Calif.) all signed the letter.

Rep. [Kevin Cramer](#) (R-N.D.) has been circulating a letter supporting staying in the Paris Agreement with a much reduced carbon commitment, but he has not yet sent it nor divulged how many lawmakers are joining him on it. Asked how many signatures he's collected for his letter, a spokesman said today, "We have no new information to share at this time."

WHAT'S NEXT: Trump is expected to announce a decision staying in the pact before the G-7 nations meet in May.

Andrew Restuccia contributed to this report.

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Carper slams talk of outsourcing EPA water rule [Back](#)

By Annie Snider | 04/18/2017 04:25 PM EDT

The top Democrat on the Senate Environment and Public Works Committee is calling on EPA Administrator Scott Pruitt to disavow any discussions among some industry groups about whether the agency could hire private lawyers to rewrite the Waters of the U.S. regulation.

"I urge you in the strongest possible terms to disavow this reported industry plan, if true, and recommit yourself to ensuring that EPA's budget and workforce are maintained at levels necessary to perform its vital mission of protecting human health and our environment," Sen. [Tom Carper](#) (D-Del.) said in a [letter](#).

The letter comes after POLITICO [reported](#) that some industry groups with close ties to Pruitt are exploring whether EPA could outsource work on the contentious regulation.

Asked about the issue, EPA spokeswoman Liz Bowman said: "To my knowledge, we are not contracting with an outside firm at this time for WOTUS."

Multiple industry sources said the discussion was fed by the fact that key positions at EPA are sitting empty, with no moves yet by the Trump administration to fill them. But Carper said that wasn't a sufficient reason for EPA to "devolve its regulatory obligations to industry."

"I question the legal validity of allowing industry to assist the agency in writing a rulemaking proposal, and consider it an utter and complete abdication of EPA's responsibility to protect the water and people of this country," he wrote, requesting a spate of documents and information from Pruitt on the issue.

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Industry groups explore outsourcing EPA water rule rewrite [Back](#)

By Annie Snider | 04/18/2017 05:01 AM EDT

Industry groups with close ties to EPA Administrator Scott Pruitt are studying whether he could hire lawyers from the private sector to redo the Obama administration's most controversial water rule.

Such an approach would effectively privatize the rulemaking process, allowing Pruitt to sidestep career bureaucrats who spent the last five years writing the Waters of the U.S. regulation, which President Donald Trump has promised to swiftly replace. But legal experts say the unusual move also would raise a host of ethical questions and likely limit the public's view into how decisions are made about which streams, wetlands and lakes across the country receive federal protection.

The idea is taking shape in discussions among members of the Waters Advocacy Coalition, which advocates to restrain the scope of federal water regulation on behalf of more than 60 industry groups including the American Farm Bureau Federation and National Mining Association. The coalition is represented by Hunton & Williams LLP, whose lawyers fought

Obama-era environmental regulations alongside Pruitt when he was attorney general of Oklahoma.

The discussion is driven by a desire to help Pruitt quickly replace the rule while he deals with a dearth of political appointees at the agency to help him, multiple industry sources said, requesting anonymity to divulge private conversations. Industry insiders have been reaching out to lawyers who may be interested in leading a WOTUS rewrite from outside the agency, according to an environmental lawyer who served in a previous Republican administration and recently received one such overture.

But members of the coalition appear to be torn on whether privatization is the right approach, according to sources familiar with the internal debate. And it is unclear whether anyone has taken the idea to Pruitt or his staff, and whether the administration would be open to it. EPA did not respond to multiple requests for comment.

EPA and other agencies routinely hire contractors to produce technical analyses or sort through public comments related to rulemakings, but it is rare that they are tapped to write the actual rules. Legal experts say it would be possible for EPA to outsource the WOTUS rewrite, although doing so would stretch the limits of federal contracting law and present ethical questions for any lawyer who took on the work.

Environmentalists decried the possibility that the Trump administration would outsource work that is supposed to be done by people in Senate-confirmed positions in order to ensure a transparent, accountable rulemaking process.

"To then say it's OK for a cabal of industry groups to put some gun for hire in charge of writing the rule, that just seems absolutely, wildly unethical," said John Rumpler, who directs the clean water program for Environment America.

While it remains to be seen if Pruitt brings in an outside attorney to help rewrite the water rule, doing so would not be out of character. As Oklahoma's attorney general, he regularly hired outside counsel to work on litigation and worked closely with industry groups to challenge environmental rules. In some cases he took industry-drafted language almost verbatim and sent it out on his office's letterhead, a 2014 New York Times [article](#) found.

Pruitt also has a history with Hunton & Williams, the water coalition's law firm. In 2013, the firm's senior director of governmental relations, Roderick Hastie, prepared talking points against an EPA rule that he encouraged Pruitt's deputy solicitor general to "cut and paste," according to emails [released](#) following an open-records lawsuit in Oklahoma. Pruitt also invited one of the firm's top attorneys to a 2013 "Summit on Federalism and the Future of Fossil Fuels" he hosted in Oklahoma City.

Don Parrish, senior director for regulatory relations at the American Farm Bureau Federation, said the idea has not been discussed at formal meetings of the Waters Advocacy Coalition, which he chairs.

"That's something that our coalition has not talked about nor would we take a position on," he said.

But Pruitt has touted the administration's move on the water rule to industry groups. He vowed "relief" was coming soon to farmers when he [spoke](#) at the Farm Bureau's Washington-based

Advocacy Conference in February, just hours after Trump signed the executive order directing his agency to review and rewrite the Obama administration's water rule. Parrish said the coalition as a whole has not met with Pruitt or his team, but would not address whether individual members have.

It is not unusual for EPA to hear from experts representing both industry and environmental groups when writing rules, although the agency generally tries to avoid getting too close so as not to violate the Administrative Procedure Act, which requires a transparent rulemaking process.

Past administrations were accused of getting too close to that line. For example, The Wall Street Journal editorial page [blasted](#) the Obama administration for its relationship with the Natural Resources Defense Council when writing its climate change rules, and former Vice President Dick Cheney faced criticism for [stacking](#) his energy task force with pro-industry voices.

Trump has not nominated anyone to lead Office of Water and Office of General Counsel — two positions that were critical to writing the Obama-era rule — and it is an open question whether he will. That has motivated some of the desire for Pruitt to bring in outside firepower.

Right now, the rewrite effort is being shepherded by Sarah Greenwalt, who went to work for Pruitt in Oklahoma just after finishing law school. The bulk of the work of rewriting the rule is being done by career staffers in EPA's Office of Water. Nearly all of those staffers spent years building the Obama administration rule, raising concerns among some of Pruitt's allies about whether they can be trusted to dismantle it.

Some of the legal experts industry groups would like to lead the rewrite are hesitant to join the agency. Sources say that is the case for Susan Bodine, the chief Republican counsel for the Senate Environment and Public Works Committee. Bodine did not respond to a request for comment Monday.

Working as outside counsel on the rewrite could offer a seasoned lawyer more flexibility and more money than a government position would, while sidestepping a Senate confirmation fight. And experts say there is little in the law to prevent the agency from tapping an outside lawyer for the task.

[Regulations](#) governing federal contracting bar the government from hiring out for "inherently governmental functions ... such as determining the content and application of regulations."

But agencies typically deal with this by writing contracts that say the outside entity will be only assisting, and the final decision will be made by federal officials, said Dan Guttman, an expert on federal contracting at New York University Shanghai.

"You end up with this fiction that as long as the official signs the final document, it doesn't matter," Guttman, who investigated federal contracting as an aide to then-Sen. David Pryor. "You deal with this by wordsmithing."

Laws designed to prevent conflicts of interest among federal contractors also may not prove much of a barrier, despite the likelihood that any law firm with the requisite Clean Water Act expertise would have a long roster of clients with a stake in a new regulation's outcome.

Potential conflicts must be disclosed, but a firm can still win a contract by demonstrating that it will take sufficient steps to avoid any impropriety and convincing Pruitt that its work would be in the government's interest.

Meanwhile, rules governing individual conflicts of interests, rather than corporate conflicts of interest, wouldn't apply to a contractor unless it was written into the contract, said Kathleen Clark a Washington University Law School professor. For example, a federal employee with a weekend job working for a coal company would be automatically barred from working on a regulation that affected the coal industry, but a contractor in the same position would not, she said.

"As a policy matter, I think this would be a terrible mistake, but as a legal matter, it may be possible," said Emily Hammond, an expert on environmental and administrative law at George Washington University Law School.

Still, a bigger challenge could be finding a lawyer willing to do the work.

Attorneys risk being disbarred if they represent opposing sides in litigation, and they take pains to avoid conflicts among their clients. Taking on a WOTUS rewrite could raise red flags at some of the firms with the most expertise in the Clean Water Act.

While industries ranging from agriculture to oil and gas to homebuilding to golf courses were united in their opposition to the Obama administration rule, when it comes down to the technical details of writing a new rule, those groups will have different interests.

Even within the agricultural sector, not everyone is on the same page, said Michael Formica, lead counsel for the National Pork Producers Council, a member of the Waters Advocacy Coalition. For example, farmers who plan to continue working the land for generations may be willing to cut a deal with federal regulators to exempt farm ditches from regulation in exchange for preserving a plot of land, but that would be a no-go for landowners who hope to someday turn their property into a subdivision or shopping center, he said.

"Some people are gentleman farmers — their farm land is really just an investment, but they want a right to develop that down the road," Formica said. "My people are real farmers and they want to buy more farmland."

Even if all of these hurdles could be overcome, it's not clear that hiring an outside lawyer to run the EPA rulemaking would get the agency anything it couldn't get otherwise, except for a giant headache, said Cary Coglianese, who leads the University of Pennsylvania Law School's Program on Regulation. He said the rulemaking process already allows ample opportunities for industry groups to weigh in, often in less obvious ways.

"What good lawyers always worry about is not only real conflicts of interest, but the appearance of conflicts of interest," Coglianese said. "If indeed you've got someone who looks too partisan and the agency's trying to basically circumvent the nomination and confirmation process by having a general counsel that's essentially on retainer — that's just the kind of swampy arrangement that the administration has claimed it wants to drain."

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Justice Department sues to block merger of nuclear waste firms [Back](#)

By Darius Dixon | 11/16/2016 04:19 PM EDT

The Justice Department has filed an [antitrust suit](#) today looking to block the merger of two nuclear waste management companies, including the firm seeking to build a storage facility in Texas.

DOJ argues that EnergySolutions' proposed \$367 million purchase of Waste Control Specialists, which has received attention on Capitol Hill for seeking to build a temporary storage facility, would "combine the two most significant competitors" for the disposal of low level radioactive waste. Waste Control Specialists has applied to the Nuclear Regulatory Commission to build a facility to store high-level reactor waste.

"[T]he transaction," DOJ says in a statement, "would deny commercial generators of [low level radioactive waste] — from universities and hospitals working on life-saving treatments to nuclear facilities producing 20 percent of the electricity in the United States — the benefits of vigorous competition that has led to significantly lower prices, better service and innovation in recent years."

Competition for nuclear disposal services will only get more heated as the nation's fleet of nuclear power plants near the end of their operational lives.

"Eliminating competition between ES and WCS would have wide-ranging effects throughout the United States," DOJ's complaint states, and the "proposed transaction would create a near-monopoly for the disposal of commercially generated LLRW in the Relevant States at a time when utilities are preparing to bid out nuclear reactor decommissioning projects worth billions of dollars."

The suit was filed in the U.S. District Court for the District of Delaware.

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