

**To:** Jackson, Ryan[jackson.ryan@epa.gov]  
**From:** POLITICO Pro Energy  
**Sent:** Thur 9/14/2017 9:43:24 AM  
**Subject:** Morning Energy: Replacing Clean Power Plan could disappoint conservatives — Domenech nomination clears Senate — More regulatory waivers extended after hurricanes

By Anthony Adragna | 09/14/2017 05:41 AM EDT

*With help from Eric Wolff*

**PRUITT'S CARBON TIGHTROPE BALANCING ACT:** Leaving the door open to rewrite the Obama administration's Clean Power Plan would help President Donald Trump's administration honor the wishes of power companies looking to avoid years of legal uncertainty but might not satisfy the demands of some conservative activists, Pro's Emily Holden [reports](#). EPA wants to move to collect comments about whether to write a new regulation, and is likely to write a new rule given the agency would be on much shakier legal ground if it simply opted not to regulate carbon dioxide from power plants.

**Any replacement rule** would be unlikely to take a meaningful bite out of carbon levels and would be based on a much narrower interpretation of EPA's Clean Air Act authority. That may be enough in the interim for some conservatives who would prefer a straight withdrawal of Clean Power Plan but who wouldn't oppose a replacement rule. "Ultimately, the responsibility to fix this mess lies with the Congress, so until they act, the only thing the Administration can do is minimize the damage," said Tom Pyle, a conservative lobbyist with the American Energy Alliance who led Trump's Energy Department transition team. But the details could have political implications for Pruitt, who is widely seen as a potential candidate for the U.S. Senate in his native Oklahoma.

**Most utilities assume** future regulations or laws will ultimately require them to curb carbon emissions even if the Obama administration's Clean Power Plan goes down and support EPA issuing a replacement rule — albeit a much weaker one. "We think that future regulation of carbon emissions from power production is likely, and could provide additional planning certainty," Tammy Ridout, a spokeswoman with coal-heavy AEP, said. Regardless of the approach Pruitt ultimately selects, environmental groups are sure to vigorously contest his efforts in court.

**DOMENECH CLEARS SENATE:** Trump's pick for Interior assistant secretary nominee, Douglas Domenech, cleared the Senate by voice vote late Wednesday. The veteran of George W. Bush's Interior Department who was on the Trump transition team's landing team at the agency said during the confirmation process that he [still believes](#) that the human contribution to climate change is very small. Domenech also previously served as Virginia's secretary of natural resources.

**But others will wait:** Efforts to fill out the Trump energy team must wait a few more days again after the Senate Energy and Natural Resources Committee shelved votes slated for today on the nominations of five FERC, DOE and Interior nominees, Pro's Darius Dixon [reports](#). Votes are now slated for next Tuesday.

**Democrats threaten to delay Bodine:** Two EPW Democrats — [Sheldon Whitehouse](#) and [Jeff Merkley](#) — threatened to hold up Susan Bodine's nomination to be EPA enforcement chief until she provides details about her advisory role to the administrator and whether she played a role in the agency's decision to enforce its methane rule on a "case by case" basis. They said Bodine's assumption of a role at EPA without being confirmed first may run afoul of federal law.

**EPA nominees up next week:** Four EPA nominees will get their day at Senate EPW for a hearing next Wednesday. They are: Michael Dourson to run the agency's chemical office; Matt Leopold to be general counsel; David Ross to run the water office; and William Wehrum's contentious bid to be EPA's top air official. The committee also will consider Jeffery Baran's renomination to another five-year NRC term.

**WELCOME TO THURSDAY!** I'm your host Anthony Adragna, and Bracewell's Frank Maisano named Schuyler Colfax and John Nance Garner as the two House speakers that became vice president. For today, and in keeping with the theme: Who is the lone speaker that went on to become president? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](#), [@Morning\\_Energy](#), and [@POLITICOPro](#).

**GET PUMPED!** POLITICO Pro convenes its first-ever policy summit today (follow along [here](#)) with a little something for everyone. Of particular interest to energy fans: a 10:30 a.m. session hosted by Pro's Nick Juliano on the implications of the Trump administration on energy policy. Panelists include: Exelon CEO Chris Crane; Senate Energy staffer Spencer Gray; Business Council for Sustainable Energy President Lisa Jacobson and MWR Strategies' Mike McKenna. Other non-energy speakers throughout the day include: Treasury Secretary Steve Mnuchin, Commerce Secretary Wilbur Ross and top House taxwriters [Kevin Brady](#) and [Richard Neal](#).

**TEMPORARY REGULATORY WAIVERS GALORE:** With Florida and Texas still restoring power and taking stock of damage following Hurricanes Harvey and Irma, federal regulators are temporarily relaxing regulatory requirements to help those states get back online. As POLITICO Florida's Bruce Ritchie [reports](#), the EPA acknowledged in a [letter](#) Wednesday it recognized the need to use "flexibility" provided in federal stormwater discharge permits for facilities affected by the storm.

**Jones Act waiver extended:** Citing "severe disruptions of the oil supply system," DHS announced Wednesday it [extended](#) a Jones Act waiver through Sept. 22 to alleviate fuel shortages in the areas affected by the hurricanes. The decision will allow foreign-flagged vessels to deliver fuel from U.S. refineries to Florida and other impacted states, something barred under the 1920 Jones Act.

**Texas' too:** EPA [said](#) late Wednesday it would waive fuel requirements under the Clean Air Act for reformulated gasoline and low volatility gasoline in Texas through Oct. 1 to "help address the emergency circumstances" in the state from the hurricanes. In addition, the agency also continued to allow the use of Texas Low Emission Diesel in 110 Texas counties.

**Three's a trend!** OMB Chief Mick Mulvaney [told](#) CNN's Jake Tapper on Wednesday there's

"plenty of time later" to discuss climate change but said the focus right now should be on helping hurricane victims in Texas and Florida. "I'd be more than happy to have a longer discussion another day about climate change, man-made climate change," he said. Energy Secretary Rick Perry previously said now's "not the time" to discuss climate change, while EPA Administrator Scott Pruitt called such talk "insensitive."

**Curbelo fine with climate talk:** Back on Capitol Hill after responding to Hurricane Irma's impacts on his district, Rep. Carlos Curbelo said climate change should be a part of post-storm discussion. "It shouldn't be the first thing people talk about — the first concern has to be all the people in the Florida Keys and throughout the state of Florida who are struggling," he told reporters. "[But] it's certainly not irresponsible to highlight how this storm was probably fueled — in part — by conditions that were caused by human-induced climate change."

**Backs Nelson's climate comments:** Curbelo said he "absolutely" agreed with his state's senior senator, Bill Nelson, that Republicans were "denying reality" if they refused to acknowledge climate change. "I am critical of both the deniers and the alarmists because they don't contribute much to solving this problem," he said. "The deniers deny it so you can't address a problem you don't recognize and the alarmists scare everyone and take credibility away from the issue, and people who are convincible then shy away. People need to talk about this in a sober way, in a rational way."

**Be on the lookout:** Curbelo said his bipartisan Climate Solutions Caucus should hit 60 members in the near future, which would triple its membership from last Congress. The caucus grew to 56 members on Tuesday with the additions of Republicans Chris Collins and Pat Tiberi and Democrats John Larson and Nydia Velazquez.

**HOUSE PANEL TAKES FIRST LOOK AT RELIABILITY:** They've split the original hearing into two, but the House Energy and Commerce Energy Subcommittee takes a first look at various issues associated at the reliability of the U.S. electric grid. Making his first congressional appearance since confirmation is FERC Chairman Neil Chatterjee. Also testifying is Gerry Cauley, president of the North American Electric Reliability Corporation, and Patricia Hoffman, an official within DOE's Office of Electricity. The background memo for the hearing, which kicks off at 10 a.m. in Rayburn 2123, is available here.

**HERE'S SOMETHING YOU WON'T SEE EVERYDAY:** Still looking to drum up momentum for their bipartisan bill boosting carbon capture and sequestration technologies, one of the Senate's most unusual possible quartets — Heidi Heitkamp, Shelley Moore Capito, Sheldon Whitehouse and John Barrasso — participate in an event hosted by the Center for Climate and Energy Solutions on the latest innovations in the technology and efforts to speed its deployment. It kicks off in Hart 902 at 8:30 a.m. Details here.

**PARTS OF EPA DISCHARGE RULE DELAYED:** EPA issued a final rule Wednesday formally delaying key compliance dates from a 2015 regulation limiting toxic discharges in power plants' wastewater streams, Pro's Alex Guillén reports. Specifically, the agency will delay deadlines related to limits on discharges of flue gas desulfurization wastewater and bottom ash transport water, two waste streams associated with burning coal for electricity, while it

reconsiders those standards. EPA said the delays will provide annualized utility cost savings between \$27.5 million and \$36.8 million.

**Environmental groups vowed to sue:** Mary Anne Hitt, director of Sierra Club's Beyond Coal campaign, said in a statement her group would take "immediate action" to fight a decision she called "so unconscionable from a public health — and common sense — perspective, that [Pruitt] couldn't even name a valid legal reason for the delay." Earthjustice Attorney Thomas Cmar called the rule "a bold-faced gift to the coal industry at the expense of the health of families everywhere."

**PROBE OF EPA GRANT PROCESS SOUGHT:** The Center for American Progress and Union of Concerned Scientists are today asking EPA's inspector general in a [letter](#) to investigate the agency's grant review process, rumored cancellation of some grants and allegations of political interference. "We urge your office to begin an investigation of these matters immediately," they write.

**REVAMPED FEDERAL LEASING PROGRAM SOUGHT:** The Wilderness Society, along with several other petitioners, are [asking](#) Interior and BLM this morning to revamp the fiscal terms and management processes regarding oil and gas leasing on federal lands. The petitioners argue their reform proposals would not harm, slow, or stop energy production on public lands. "Analyses of these decades-old [current] policies has shown that they are harming the taxpayers that the BLM is obligated to ensure receive the benefits of leasing and the public lands that BLM is obligated to ensure are managed for multiple use and sustained yield," they write.

**HIDDEN DANGER IN OKLAHOMA?** Massive oil storage tanks in Cushing, Okla. could be growing more vulnerable by the day as man-made earthquakes stemming from fracking tests their limits, Kathryn Miles reports in POLITICO Magazine. Five of the largest energy companies each said have procedures and protocols for natural disasters, but that they would not comment on the specific designs of their tanks, nor how those tanks would fare in a major earthquake. Read the full thing [here](#).

**NRDC SEEKING REHEARING ON REFRIGERANTS CASE:** The Natural Resources Defense Council plans to ask the D.C. Circuit for an en banc rehearing of [last months' decision](#) striking down an EPA rule limiting use of hydrofluorocarbons, a global warming exacerbating coolant. NRDC believes the majority in the 2-1 decision erred in its determination that the law was clear and did not require agency interpretation, known as Chevron Step 1. "[D.C. Circuit Judge Brett] Kavanaugh interprets the law in a way that eviscerates the program," said David Doniger, head of climate programs for NRDC. "Everybody understood to this point that the substitutes for ozone depleting chemicals were replacements ... and when new ones are developed safer than the old ones, the old ones are supposed to give way." HFCs fall out of the atmosphere faster than CO2, but have a far higher global warming potential.

**Honeywell, too?** "We believe the EPA's regulation is well-supported by the law and was in the best interests of the public, industry and the environment," a spokeswoman for Honeywell International Inc. said in an email to ME. Honeywell makes next generation coolants. "We are closely reviewing the decision and are likely to pursue an appeal, and are already taking steps to

ensure that the accelerated transition to HFC alternatives continues."

**FOR YOUR REFERENCE:** Advanced Energy Economy today released seven specific [issue briefs](#) as policymakers consider ways to modernize the U.S. electric grid. They cover: advanced metering; access to data; optimizing capital expenditures; distributed energy resource ownership; using energy efficiency as a resources; performance-based regulation and designing rates in a distributed energy resource future.

**BETTER LUCK NEXT YEAR?** Two ambitious bills in California — laying the groundwork for a regional electricity grid and eventually phasing out use of fossil fuels — won't advance this year, a key committee chairman [told the Los Angeles Times](#) Wednesday. "There's not a lot of time for the engagement we need to make it work," Assemblyman Chris Holden said, adding they should be considered as part of a "comprehensive conversation" in 2018. The legislative session ends Friday and the deadline for amending legislation was Tuesday night.

**REPORT: CLOSING COAL PLANTS MEANS BIG BUCKS:** Phasing out inefficient coal plants would save U.S. customers up to \$10 billion annually by 2021, a [new report](#) from Carbon Tracker finds. Constructing combined cycle gas turbines will be more cost-effective by the mid-2020s than continuing to operate 78 percent of the nation's current coal fleet, the study concludes. "The US power sector remains entirely unprepared for a coal phase-out consistent with a below [2 degree] C outcome," it finds, referring to the goal of the Paris climate agreement to limit global temperature increases.

**NEW EDF AD USES HARVEY FOOTAGE:** The Environmental Defense Fund is launching a [new ad](#) in the Washington area for three weeks using footage from the Arkema plant incident in Texas. The ad warns Congress that cutting the agency's budget could harm disaster response moving forward.

**MOVER, SHAKER:** Nick Conger starts a new gig as former Vice President Al Gore's communications director in Nashville on Oct. 2. The Obama administration EPA veteran leaves his current post as a press secretary at NRDC on Sept. 22. "I couldn't be more thrilled to join [Gore's] team and help shape his public activities," he writes of his role.

## QUICK HITS

— New York's buildings emit most of its greenhouse gases. The mayor has a plan to change that. [Washington Post](#).

— Former Vice President Al Gore: Investors can lead climate change battle. [CNBC](#).

— US judge cites tribal sovereignty in dismissing coal lawsuit. [AP](#).

— Colorado outlines how new pipeline rules will be considered after fatal Firestone explosion. [Denver Post](#).

— Saudis Prepare for Possible Aramco IPO Delay to 2019. [Bloomberg](#).

— Oil Rises on Signs of Tightening Supply. Wall Street Journal.

## **HAPPENING TODAY**

8:30 a.m. — "State of the Art: Innovations in CO2 Capture and Use," Center for Climate and Energy Solutions, Hart 902

8:30 a.m. — The Alliance to Save Energy hosts Great Energy Efficiency Day (GEED), Columbus Club, Union Station, 50 Massachusetts Ave NE,

8:30 a.m. — POLITICO Pro policy summit, Omni Shoreham Hotel, 2500 Calvert Street, NW

9:30 a.m. — Business meeting to consider various nominations, Senate Energy and Natural Resources Committee, 366 Dirksen

10:00 a.m. — "EIA's International Energy Outlook 2017," Center for Strategic and International Studies, 1616 Rhode Island Avenue, NW

10:00 a.m. — "U.S. Policy Options to Support Democracy in Venezuela," Senate Foreign Relations Committee, Dirksen 419

10:00 a.m. — "Part One: Powering America: Defining Reliability in a Transforming Electricity Industry," House Energy and Commerce Energy Subcommittee, 2123 Rayburn

11:00 a.m. — Sen. Markey and Rep. Cartwright hold press conference to announce climate change and public health legislation, S-115, U.S. Capitol

## **THAT'S ALL FOR ME!**

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2017/09/replacing-clean-power-plan-could-disappoint-conservatives-024587>

## **Stories from POLITICO Pro**

**Repeal and replace approach to EPA climate rule may disappoint Trump base** [Back](#)

By Emily Holden | 09/14/2017 05:01 AM EDT

The Trump administration is leaving the door open to replace former President Barack Obama's landmark climate regulation for power plants — a move that would fall short of conservatives' calls to erase it all together

A mend-it-don't-end-it approach from the Environmental Protection Agency on Obama's 2015 rule could appease power companies that say they need some kind of EPA regulations — albeit

much weaker ones — to save them from years of legal uncertainty. But it might not satisfy the demands from some conservative activists, who have pressured EPA Administrator Scott Pruitt to reject the entire idea that climate change is a problem requiring federal action.

The agency is aiming by early October to issue a proposal to undo the Clean Power Plan, along with a separate advance notice of its intent to consider a replacement, a source close to the process told POLITICO.

That approach still leaves a wide array of options on the table — including ultimately deciding against a new rule — and it could allow Pruitt to stretch out the process for several more years without ultimately resolving how the agency should address the greenhouse gas emissions from power plants, one of the largest contributors to human-caused climate change.

The Clean Power Plan encouraged the power sector to shift away from coal and toward natural gas and renewable power, an approach that Obama's critics said exceeded EPA's authority under the Clean Air Act. At a minimum, Trump's EPA would likely seek to limit any replacement to require only the negligible carbon emissions reductions that could be achieved at coal plants themselves, without prodding states and utilities to replace those facilities with cleaner generation.

The details about how to begin unraveling Obama's climate regulations could have political implications for Pruitt, who is widely seen as a potential candidate for the U.S. Senate in his native Oklahoma. Repealing the power plant rule was an explicit campaign promise for President Donald Trump, who has dismissed man-made climate change as a "hoax."

For now, conservatives appear willing to give Pruitt the benefit of the doubt because he is walking a legal tightrope and could still decide to take aim at EPA's underlying obligation to regulate carbon emissions. The D.C. Circuit Court of Appeals has agreed to keep litigation over the Clean Power Plan on hold through Oct. 7, but judges warned Pruitt last month that EPA is dodging its legal obligation to regulate carbon by failing to outline its next steps on the rule.

Myron Ebell, the climate skeptic who led EPA's transition team, has pushed for Pruitt to fight the agency's "endangerment finding" that it must address climate change. But he said a replacement rule might be an "adequate stopgap."

He said if the courts ultimately find that a coal-plant focused rule isn't enough to fulfill EPA's legal obligation, then "in order to keep the president's promise that we're going to get rid of these economically destructive rules, the only alternative they will have is to reopen the endangerment finding."

Challenging that finding, which determined that heat-trapping gases like carbon dioxide were a public health threat, would mean fighting climate change science, and most lawyers say it is a losing battle. The Obama administration issued the endangerment finding in 2009, two years after the Supreme Court told EPA to determine its role in fighting climate change.

Tom Pyle, a conservative lobbyist with the American Energy Alliance who led Trump's Energy

Department transition team, said he would prefer a straight withdrawal of the Clean Power Plan but wouldn't oppose a replacement rule.

"Ultimately, the responsibility to fix this mess lies with the Congress, so until they act, the only thing the Administration can do is minimize the damage," Pyle said via email.

But EPA would be on much shakier legal ground if it just refused to regulate carbon dioxide from power plants, the nation's largest source of greenhouse gas pollution.

EPA wants to move to collect comments about whether to write a new regulation, and is likely to write a new rule, multiple sources said.

Any replacement would be based on a narrow interpretation of EPA's authority and is unlikely to make a meaningful dent in carbon levels — unlike Obama's version, which pledged to cut the power industry's carbon pollution as much as 32 percent below 2005 levels by 2030.

Opponents of the Clean Power Plan have also argued that the rule is illegal because EPA had already regulated coal plants under a different section of law. EPA could still make that argument while proposing to withdraw the plan and invite comments on the idea in its notice of a potential replacement.

Environmental groups are expected to sue no matter which path Pruitt and Trump take.

"There would be very intense protests to rescinding the Clean Power Plan and replacing it with nothing indefinitely, which is what this would be," said Sean Donahue, a lawyer at Donahue & Goldberg who represents environmental groups defending the Clean Power Plan in court.

EPA is planning to issue an Advance Notice of Proposed Rulemaking (ANPR), the first step toward issuing a replacement for the Clean Power Plan, according to the source familiar with the process. But that route leaves many options open.

Kevin Poloncarz, a lawyer with the firm Paul Hastings who represents energy companies supporting the Clean Power Plan, said the notice could be "fairly nondescript" and could suggest a replacement rule or ask for feedback on whether EPA can legally regulate power plants under the section of the Clean Air Act that the Obama administration used.

If EPA simply rescinded the Clean Power Plan without announcing plans to consider a replacement, Poloncarz said power companies could face nuisance lawsuits.

Issuing the notice could be a compromise position. While it's in place, "the industry should feel some degree of comfort that they're insulated from those lawsuits," Poloncarz said.

States like New York could still take court action against EPA if the agency is taking too long or questions its own authority on greenhouse gases, he added.

It's not unusual for an agency to take years to follow up on an ANPR. EPA took about six years

to issue its draft Clean Power Plan in 2014.

"The entire point of ANPR is to help agencies decide which course they want to pursue where there are multiple options," said Tom Lorenzen, a partner at Crowell & Moring who represents electric cooperatives challenging the Clean Power Plan.

"I think one purpose of an ANPR would be to send a message to the court that EPA is thinking about what comes next," he added.

Lorenzen said an ANPR could suggest a replacement rule or argue that any regulation is illegal because the agency has already regulated power plants under Section 112 of the Clean Air Act.

Several attorneys noted that Bill Wehrum, the lawyer nominated to run EPA's air office, has represented power industry clients who likely would back a replacement rule because they consider regulation to be inevitable.

Most utilities assume a future regulation or law will require them to curb carbon emissions, even if Trump's EPA rescinds the Clean Power Plan.

Even coal-heavy power companies have said they support EPA issuing a replacement rule.

AEP, a Midwestern power company that gets slightly less than half of its electricity from coal, would back a new proposal "consistent with the EPA's authority under the Clean Air Act," spokeswoman Tammy Ridout said.

In 2005, 70 percent of AEP's power came from coal, but the company has been intentionally shifting toward renewable power and lower-carbon natural gas.

"We think that future regulation of carbon emissions from power production is likely, and could provide additional planning certainty," Ridout said.

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**Interior nominee Domenech says human role in climate change small** [Back](#)

By Esther Whieldon | 07/20/2017 01:12 PM EDT

Interior assistant secretary nominee Douglas Domenech told his senators at his confirmation hearing today that he still believes that the human contribution to climate change is very small.

At the Senate Energy and Natural Resources Committee hearing, Sen. [Al Franken](#) (D-Minn.) asked Domenech, President Donald Trump's nominee for assistant secretary for insular areas, if he still stood by his December [op-ed](#) that said that humankind was impacting the climate in "very

small ways."

Domenech, an Interior veteran who was on the Trump transition team's landing team at the agency this year, said "yes."

The senator asked whether Domenech, given his views on climate change, is the "right person" to help vulnerable island communities that are being impacted by sea level rise.

Domenech said that as Virginia's secretary of natural resources, he helped the fishing community in Tangier Island in Chesapeake Bay deal with erosion and sea level rise.

"We worked with them quite a bit in terms of reinforcing their shoreline and those kinds of activities with the Corps of Engineers, and so I take it very seriously, I don't at all minimize that the climate is changing," Domenech said.

**WHAT'S NEXT:** Senators will by the end of today send Domenech a list of questions they want answered for the record and the committee will likely wait to schedule a vote on his nomination until they receive his responses.

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**Senate energy committee delays vote on FERC, DOE and DOI nominees** [Back](#)

By Darius Dixon | 09/13/2017 06:28 PM EDT

The Senate Energy and Natural Resources Committee announced this evening it postponed a Thursday morning series of votes on President Donald Trump's nominees for FERC and the departments of Energy and Interior.

The panel was slated to consider Kevin McIntyre for chairman of FERC, Richard Glick for FERC commissioner, David Jonas for DOE general counsel, and Ryan Nelson and Joseph Balash for solicitor and assistant secretary for land and minerals management at DOI. The vote will now happen Sept. 19.

A committee spokesperson said the vote was delayed because of "member availability."

**WHAT'S NEXT:** The Senate energy committee will vote on the nominees on Tuesday at 9:30 a.m.

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## **POLITICO Pro Florida: EPA backs Florida on stormwater permit 'flexibility' following Irma** [Back](#)

By Bruce Ritchie | 09/13/2017 07:10 PM EDT

EPA is telling state officials they recognize the need to use "flexibility" provided in federal stormwater discharge permits for facilities affected by Hurricane Irma.

Florida regulations allow for temporary bypass of stormwater systems or unintentional noncompliance in emergency situations, Florida Department of Environmental Protection spokeswoman Dee Ann Miller said.

The state had relayed concerns to the EPA about those provisions relating to Hurricane Irma, said Miller, who added that those bypass provisions will allow ports and other facilities get back into operation as quickly as possible.

In a [letter](#) released today, EPA regional administrator Trey Glenn said the agency recognized the need under federal law for "potential flexibility" because of circumstances caused by Hurricane Irma that are "beyond the reasonable control" of permit holders.

"The EPA also recognizes there may be other unforeseen issues that arise as a result of this disaster and we stand ready to work together with our state partners to address these potential issues as they arise," Glenn wrote.

*This story first appeared on [POLITICO Pro Florida](#) on Sept. 13, 2017.*

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## **Florida Sen. Bill Nelson: Republicans 'denying reality' on climate change** [Back](#)

By Michael Grunwald | 09/12/2017 09:06 PM EDT

Democratic Senator Bill Nelson of Florida, after surveying the damage that Hurricane Irma inflicted across his state, blasted Republican politicians who reject the science and minimize the importance of climate change—including his likely opponent in 2018, Governor Rick Scott.

In an interview Tuesday evening with POLITICO, Nelson said it's clear that manmade global warming made Irma worse by increasing the temperature and the height of the seas that fueled the storm. He said he didn't want to play partisan politics in the aftermath of a hurricane, but then went on to criticize Republicans in general and Scott in particular—though not by name—for opposing climate action. He noted that both the Trump administration in Washington and the Scott administration in Tallahassee have reportedly discouraged government employees from

even talking about climate change.

"It's denying reality," Nelson said. "You can call it politics or whatever, but the Earth is getting hotter. This storm is another reminder of what we're going to have to deal with in the future."

Nelson, a former astronaut, launched into a detailed explanation of the science of climate change and the greenhouse effect, and how it has helped make the waters around Florida higher and warmer in recent decades. He said it would be a crucial issue in his reelection campaign, even as he avoided the words "Rick Scott."

"It's certainly going to be an important issue, and if certain people such as the one you mentioned is my opponent, there's a significant contrast in what we believe," Nelson said.

Florida is a swing state in presidential elections, but its state government and statewide offices tilt heavily Republican; Nelson has been an exception to the red wave, but a well-known, well-funded opponent like Scott would be by far his most difficult challenge to date. He clearly sees climate as a potential wedge issue in a state with a heavily coastal population and increasing vulnerability to Irma-type disasters. Scott did not discuss the issue in his frequent Irma briefings; a spokesperson for the governor, when asked about Nelson's comments, said, "Now is not the time for politics. This storm is not a partisan issue. Now is the time to focus on helping Florida rebuild."

But in the past, he has questioned climate science—or declined to affirm the scientific consensus that it's being caused by humans, often noting, "I am not a scientist"—and fossil-fuel interests have supported his campaigns. In 2015, the Miami Herald [reported](#) that Scott's administration had even banned the use of the terms "climate change," "global warming" and "sustainability" in official documents.

Nelson is not known in Washington as a leader on climate issues, but he said he's focused on them since he was Florida's insurance commissioner in the 1990s. He's fought against President Trump's proposed cuts to climate science at agencies like NOAA, NASA and EPA, and said he helped persuade the Obama administration to launch a satellite, first dreamed up by Al Gore, that takes continuous pictures of the Earth from deep space.

But Nelson didn't really argue that he deserved kudos for accepting the conclusions of the scientific community; he argued that Republicans on the other side of the issue need to explain why they think "99.5 percent of climate scientists" are wrong. Several prominent Republicans in South Florida—including Miami-Dade County mayor Carlos Gimenez and Reps. Carlos Curbelo and Ileana Ros-Lehtinen—have made it clear they believe Washington needs to take climate seriously. Nelson pointed out that politicians don't question government scientists when they say a hurricane is coming—but when the same agencies use the same scientific instruments to measure long-term climate trends, opinions suddenly differ.

"It's ironic, isn't it?" Nelson said. "They accept the hurricane information, but deny the climate information ... Look, some people still think the Earth is flat."

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## **EPA delays parts of power plant toxic discharge rule [Back](#)**

By Alex Guillén | 09/13/2017 03:35 PM EDT

EPA has finalized a [rule](#) delaying by two years the key compliance dates for a 2015 regulation limiting toxic discharges in power plants' wastewater streams while it reconsiders those standards.

The delay provides "relief from the existing regulatory deadlines while the agency revisits some of the rule's requirements," EPA Administrator Scott Pruitt said in a statement.

Following industry requests, EPA specifically is delaying deadlines related to limits on discharges of flue gas desulfurization wastewater and bottom ash transport water, two waste streams associated with burning coal for electricity. EPA estimates the two-year delay of those requirements will provide annualized utility cost savings between \$27.5 million and \$36.8 million.

The agency said it will not revisit new standards for other types of waste streams — including fly ash transport water, flue gas mercury control wastewater and gasification wastewater — and will leave deadlines associated with those streams in place.

The delay will take effect two weeks after it is published in the Federal Register, and is open to court challenges.

The Obama administration said the overall rule, known as effluent limitations guidelines or ELGs, ultimately would curb 1.4 billion pounds of aluminum, lead, mercury, arsenic and other toxic metals from entering waterways via discharge streams each year.

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## **How Man-made Earthquakes Could Cripple the U.S. Economy [Back](#)**

By Kathryn Miles | 09/14/2017 05:03 AM EDT

When Hurricane Harvey made landfall in Texas, U.S. oil refining plummeted to record lows. Now, two weeks later, six key refineries remain shut down and an additional 11 are either struggling to come back on line or operating at a significantly reduced rate. That slowdown, coupled with predictions of decreased demand in the wake of Irma and the devastating

earthquake that struck Mexico last week, has shifted oil pressures in other places, too. And none may be quite as vulnerable as the tank farms in Cushing, Oklahoma.

Dubbed the "Pipeline Crossroads of the World," Cushing is the nexus of 14 major pipelines, including Keystone, which alone has the potential to transport as much as 600,000 barrels of oil a day. The small Oklahoma town is also home to the world's largest store of oil which sits in hundreds of enormous tanks there. Prior to this recent spate of natural disasters, Cushing oil levels were already high. They've increased nearly a million barrels to nearly 60 million barrels in the two weeks since.

This concentration of oil, about 15 percent of U.S. demand, is one reason the Department of Homeland Security has designated Cushing "critical infrastructure," which it defines as assets that, "whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof."

The biggest potential cause of that incapacitation? According to Homeland Security, it's not terrorism or mechanical malfunction. It's natural disaster. And here's the problem: When most of the Cushing tanks there were constructed, the most logical cause of any such disaster seemed like a catastrophic tornado. No one anticipated swarms of earthquakes. But that's what began occurring about five years ago, when wastewater injection and other fracking-related activities changed the seismic face of Oklahoma in dramatic fashion. Two hours before that deadly quake in Mexico, for instance, a magnitude 4.3 temblor shook Central Oklahoma, knocking out power for thousands. The earthquake, which had an epicenter just 100 miles northwest of Cushing, was the 186<sup>th</sup> quake in Oklahoma to register a magnitude 3.0 or higher.

This man-made seismicity has changed the landscape of Oklahoma significantly, from a state with one of the lowest seismic rates in the country to the most seismically active in the lower 48, says Ken Erdmann is Senior Vice President at Matrix Engineering, the firm that designs, fabricates, and builds many of the tanks in places like Cushing. "It's not natural. It's not Mother-nature based."

That's a problem, he says because the statistical analysis used to establish safe environmental loads is based on historical intervals—both the average and maximums of events like snowfall or wind or seismic activity.

"When those levels become man-made induced numbers," says Erdmann, "statistics are no longer really relevant."

But while the number of earthquakes and their intensity has increased in recent years, the strength of the regulatory apparatus in place to ensure their safety hasn't kept pace. Oversight of the tanks has been left to a tiny agency buried inside the Department of Transportation that was never intended to serve this role. And the safety standards, which one earthquake expert calls the weakest permissible, were created by an industry trade group rather than the government agency. For those inclined to contemplate worst-case scenarios the prospect of an earthquake rupturing the Cushing tanks would be an environmental catastrophe far greater than the Exxon Valdez.

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**When most of these tanks** were constructed, seismic activity in Oklahoma was negligible. In 2011, the state experienced a 5.6 quake. Last year, they had a 5.8—the same magnitude as the quake that rocked Washington and much of the eastern seaboard six years ago. That Oklahoma event toppled the exteriors of historic buildings and prompted the Pawnee nation to declare a state of emergency. Seismologists at the United States Geological Survey say the area around Cushing is capable of an even stronger quake—maybe even a 7.0. Earthquake magnitude is measured exponentially, which means that a 7.0 quake would be 15 times larger than the biggest one to hit Oklahoma so far. And it would release over 60 times as much energy.

What would it do to the Cushing tanks? I posed that question to each of the five largest oil companies there.

Michael Barnes, senior manager of U.S. Operations and Project Communications at Enbridge, which holds nearly half the oil at Cushing, says it's the company's policy not to comment on speculative questions such as mine "because by their very nature they are hypothetical." What he would say is that the company regularly participates in safety drills, workshops and other activities. That includes protocols preparing for seismic activity.

"In the event of an earthquake, procedures are in place to respond quickly and confirm Enbridge tanks and other facilities were not impacted and can continue to operate safely," says Barnes. "This includes dispatching technicians and other experts to perform visual inspections and check instrumentation on tanks, pipes, motors and pumps."

I received a similar response from the other energy companies with major Cushing holdings: that they have procedures and protocols for natural disasters, but that they would not comment on the specific designs of their tanks, nor how those tanks would fare in a major earthquake.

Getting an answer out of the government can be just as frustrating. A big part of the problem is the Byzantine system of governmental agencies regulating these tank farms. This oversight varies from state to state. In Oklahoma, most energy concerns are controlled by the Oklahoma Corporation Commission (OCC). But, says their spokesperson Matt Skinner, the OCC only regulates intrastate pipelines and tanks.

"If any part of that oil leaves the state or comes from elsewhere," says Skinner, "it becomes totally outside of our jurisdiction."

Determining that jurisdiction is no easy matter. The EPA regulates "non-transportation-related oil storage tanks," but that excludes farms like Cushing, which are tied to pipelines. The person I talked to there couldn't tell me who regulates Cushing, nor could the spokesperson for the Department of Energy, which oversees our country's petroleum reserve sites. The Department of Transportation regulates oil and gas pipelines, unless they cross federal lands, in which case they are the purview of the Bureau of Land Management, or if they are operated by the military. Gas and oil produced on the outer continental shelf falls under the Department of the Interior, which

works in concert with the Department of Transportation to regulate its movement.

I called those offices as well, asking if they knew what agency regulated tanks like the ones at Cushing. No one I spoke to knew—including at the public affairs office of the Department of Transportation. As it turns out, a tiny office in the DOT known as the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulates the tanks. Established by President George W. Bush in 2004, PHMSA was intended to increase security around the transportation of hazardous fluids like gas and oil. As such, it was never really meant to govern stationary storage. I asked their spokesperson what seismic regulations were in place for tank farms like Cushing. He referred me to Appendix C of the Pipeline Safety Regulations. And it is true that there are seismic considerations there: provisions regarding safety reporting, any "unintended" or "abnormal" movement of a pipeline, or reduced capacity of a pipeline because of seismic activity. But none of these considerations mentions storage tanks per se. I asked that same spokesperson to direct me towards the language relating to tanks. He has yet to respond.

None of this surprises the OCC's Matt Skinner. "I've gone through the standards a bunch of times," he says. "I haven't found any relating to tanks and seismic activity."

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**If the government isn't explicitly** regulating the ability of the tanks to withstand an earthquake, then who is? Turns out that what standards do exist are created by the American Petroleum Institute, a national trade organization representing the oil and gas industry. And the standards are not overly rigorous, say seismologists.

Tom Heaton, professor of Geophysics and Director of the Earthquake Engineering Research Laboratory at Caltech says most, if not all, of the tanks in Cushing are built to the weakest industry design standards. He thinks even a moderate quake could be enough to violently push the oil from one side of the tank to another. In geological terms, the phenomenon is known as a seiche: an internal wave or oscillation of a body of water. The more oil is in a tank, the more dangerous that seiche becomes.

That makes tank farms like Cushing particularly vulnerable in the face of other natural disasters like Harvey and Irma as oil and pipeline companies engage in a kind of shell game for oil storage—full tanks do better in high wind conditions like hurricanes and tornadoes; they fare far worse in earthquakes.

And certainly there is precedent for the kind of damage Heaton predicts. In the years after the 1994 Northridge earthquake in California, the National Institute of Standards and Technology (NIST), found evidence of seismically-induced oil tank damage going back as far as the 1930s and as recently as the 1994 quake, some of which was catastrophic.

But Ken Erdman is circumspect about just how much damage a major quake might wreak on the Cushing tank farms. In addition to his role at Matrix, Erdmann also heads up the API committee that creates standards for the tanks. He says it's true that ones in Cushing weren't built for moderate or severe quakes, and that the shaking caused by one would almost certainly be

"beyond allowable limits" for the API standards utilized at the Oklahoma farms. Probably, he says, you'd see buckling and deformation of the tanks rather than full failure.

The real problem, he says, would be the pipelines themselves, says Ron Ripple, Mervin Bovaird Professor of Energy Business and Finance at the University of Tulsa. Ripple estimates that an earthquake or other disaster would have to knock out half those tanks to have a real impact on the market. Of bigger concern to him are the pipelines, which control a larger volume of oil. He points to the October 2016 explosion of the Colonial Pipeline in rural Alabama as a corollary. The resulting fire kept crews from repairing the pipeline proper for six days. During that time, oil commodity prices jumped 60 percent—the highest spike in nearly a decade. Exporters clamored to find work-arounds, including tankers capable of moving the oil by sea. As a consequence, freight cargo rates increased by nearly 40 percent. Meanwhile, motorists in southern states rushed the pumps, elevating prices there, too—forcing the governor of Georgia to issue an executive order warning about price gouging.

It wouldn't be unreasonable, says Ripple, to see a similar scenario were the Cushing pipelines to go down. The Colonial Pipeline moves about 100 million gallons of oil and gasoline a day—about the equivalent of the Seaway Pipeline, just one of the more than dozen that converge on this town. That pipeline was also shut down in late 2016, after authorities in Cushing noticed a spill. The effect of that shutdown had the opposite effect, pushing the price of US oil below \$50 a barrel, as international traders worried they wouldn't get their deliveries.

"Prices move through the markets fairly quickly," says Ripple. "We tend to see opportunistic changes in prices right after an event. Some of those look like a pretty close cause-and-effect relationship between supply and demand. Other times, you'll see impacts that leave us all scratching our heads. In the end, you just don't know how the market and consumers will react."

Johnson Bridgwater, director of the Oklahoma Chapter of the Sierra Club, says he's mindful of the economic effects of such a spill, but it's the impact on the landscape and the people who occupy it that most concerns him. Imagine, says Bridgwater, if Ripple's scenario of losing half the tanks came to fruition.

"That's fifty million barrels," he says. "We'd be looking at our own on-land *Exxon Valdez*."

Worse, actually. The *Valdez* was carrying just over a million barrels of oil. A quarter of that spilled. And light crude, the kind of oil stored in Cushing, poses particular challenges to an environment, often killing animals or plants on contact and emitting dangerous fumes that can kill both human and animal residents.

"This would not be a simple cleanup," says Bridgwater. "You'd have an uninhabitable community for a long time."

That shouldn't be acceptable to anyone, says U.S. Representative Bobby Rush, the Chicago area Democrat who serves as the ranking member on the Committee on Commerce and Energy's Subcommittee on Energy.

"Over the past five years or so Oklahoma has become more active as an earthquake zone. PHMSA must account for these changing circumstances and implement appropriate regulations that apply to tank farms located in these more sensitive areas to make them more sturdy and secure. The fact of the matter is that we must ensure that these tanks, which hold vast amounts of oil, are designed to withstand seismic activity in order to protect both the public safety and the local, state, and national economies that rely heavily on this resource."

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### **Court ruling leaves HFC future in hands of EPA, Congress [Back](#)**

By Eric Wolff | 08/09/2017 05:09 PM EDT

The effort to get the U.S. to comply with a treaty eliminating a heat-trapping chemical now faces a grueling path after a major courtroom setback this week — and it may depend on EPA using its power to regulate chemicals.

The D.C. Circuit Court's [ruling](#) Tuesday forced EPA to abandon its plan to use the Clean Air Act to limit use of hydrofluorocarbons, a refrigerant that would be phased down under recent changes to the Montreal Protocol. Proponents of the effort, including environmentalists and the air conditioning industry, will now need the Senate to approve the treaty and Congress to pass a new law authorizing EPA to implement it, or they will have to persuade EPA Administrator Scott Pruitt to act — no small feat considering the EPA chief's disdain for both climate change initiatives and regulations.

The changes to the Montreal Protocol agreed to in Kigali, Rwanda, last year would curtail global use of HFCs, a move that scientists say could prevent up to 0.5 degrees Celsius — 0.9 degrees Fahrenheit — of warming by the end of the century. U.S. industry groups have supported the Kigali agreement and had backed EPA's plan to implement it under the Clean Air Act's Section 612. That section, put in place nearly 30 years ago as authorizing language to implement the initial Montreal Protocol, established a market mechanism that was designed to reduce ozone-damaging chemicals.

But the court's rejection of using Section 612 may require new legal authority to empower EPA to act if the U.S. eventually ratifies the Kigali amendment.

"You'll have a treaty and have Congress look at it and pass implementing legislation," said Stephen Yurek, CEO of the Air Conditioning, Heating, and Refrigeration Institute, whose members are the world's biggest makers of HFCs — and will produce most of the next generation chemicals.

In its ruling, the D.C. court suggested a slew of laws EPA could use to regulate HFCs: The Toxic Substances Control Act, the National Ambient Air Quality Standards, regulating as a hazardous

air pollutant, and regulating HFCs in cars and trucks. But several lawyers said TSCA was the only credible alternative.

"There's a lot of authority under TSCA to regulate chemicals and chemical uses," said Jane Montgomery, a partner with Schiff Hardin who works with power companies. "It's not as straightforward as what they intended to under 612, but there's an environmental harm portion of TSCA. ... For managing the sale and manufacturing and use, TSCA is the most appropriate statute we have."

Yurek said AHRI was still reviewing TSCA as an option, but he feared that it would be a blunt instrument, requiring EPA to issue a rule that immediately limited or banned HFCs, in contrast to the phase-down approach created under Section 612 of the Clean Air Act.

"I'm concerned that it's much more of a command-and-control-type regime, you have different categories, and potentially banning," he said.

Under the TSCA update Congress passed last year, EPA must assess HFCs before regulating them, and then issue a rule, a process that could take about five years, legal experts said. The agency would ultimately have the authority to limit or even prohibit them, Montgomery said. And in its ruling, the D.C. Circuit upheld several of EPA's tools used to assess the global warming impact of HFCs, bolstering the case for a potential TSCA rule.

AHRI and environmental attorneys largely dismissed the court's other suggestions for EPA to comply with the Kigali goals. The NAAQS program focuses on just six pollutants, none of which are HFCs, they said. Congress similarly created a fixed list of pollutants under the hazardous air pollutants rules, limiting that program's broader application, attorneys said. And refrigerants used in car and truck air conditioners make up only a small part of the refrigerants market.

"These authorities are even less congruent with the authority the EPA invoked in this rulemaking to regulate ozone-depleting chemicals and their substitutes down the road," said Brendan Collins, a partner with law firm Ballard Spahr who represents power companies and oil and gas companies.

EPA says it is still reviewing the court decision, but it's not clear whether Pruitt would advance another rule to govern HFCs, even though it is backed by business interests. Proponents of the Kigali treaty could draw a skeptical reception from the Trump administration, which has been dismissive of both multi-party treaties and climate science — though the administration did defend the rule in court in February. The White House would need to submit the treaty amendment to the Senate for ratification.

Kigali advocates have long aimed to keep a low profile and quietly persuade staffers to support the effort as the administration got up to speed. AHRI is now trying to determine whether the court decision will require a change in its strategy, or if it can apply the same pro-U.S. business approach to the more conservative House.

"We have to decide [if] we do a more public push or keep the schedule," Yurek said. "Right now, the plan is that we continue to wait until the end of this year, and continue to educate both House and Senate."

Green groups who back the ban on HFCs may try a more direct route by appealing to the D.C. Circuit for en banc review. There are seven D.C. Circuit judges appointed by Democrats, versus four appointed by Republicans, potentially giving the appeal an edge — though that advantage flips at the Supreme Court, should the case go that far.

"We are exploring the options," said David Doniger, director of climate programs for the Natural Resources Defense Council. "Including rehearing based on the dissent."

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