



Week of October 15, 2017

## ● Department of Interior Rescinds OSM Enforcement Policies

On October 12, 2017, the Department of the Interior ("DOI") withdrew two prior Office of Surface Mining ("OSM") policies affecting mining operations. DOI rescinded a July 2016 document by the previous administration entitled "A More Complete Enforcement of SMCRA and Its Implementing Regulations," which tried to connect enforcement powers of OSM under the federal Surface Mining and Reclamation Act with the federal Clean Water Act. This 2016 directive attempted to empower OSM with the authority to investigate and sanction Clean Water Act violations under its Surface Mining and Reclamation Act mandate. The DOI also rescinded OSM's August 2016 policy advisory, which instructed state regulatory agencies to limit self-bonding options until the coal market recovers some stability. The revision of these previous regulatory mandates by DOI takes a heavy burden off of the coal industry. --- [William M. Herlihy](#)

## ● Administrator Pruitt Issues Directive to End EPA "Sue & Settle"

*"In fulfilling his promise to end the practice of regulation through litigation that has harmed the American public, EPA Administrator Scott Pruitt issued an Agency-wide directive designed to end 'sue and settle' practices within the Agency, providing an unprecedented level of public participation and transparency in EPA consent decrees and settlement agreements."*

**Why this is important:** Elimination of this (at times arguably collusive) strategy will stop environmental special interests from being able to "force" EPA to implement desired policy goals outside of the normal administrative regulatory process. In these scenarios, EPA has often committed to taking an action that is not a mandatory requirement under its governing statutes or agreed to a specific, unreasonable timeline to act. These agreements are usually reached with little to no public input or transparency. With this policy directive, EPA Chief Pruitt is ensuring EPA will increase transparency, improve public engagement and provide public accountability when considering a settlement agreement or consent decree. --- [John C. \(Max\) Wilkinson](#)

## ● FERC Approves Mountain Valley, Atlantic Coast Pipeline Projects

*"FERC's orders - a combined 291 pages long - included a variety of conditions that apply to the approvals, and it was not entirely clear the impact of those conditions or how the commission's action would affect pending litigation and other permit reviews for the projects."*

**Why this is important:** While FERC approval of the MVP and ACP projects contains a number of environmental conditions concerning mitigation and operations, it does not appear at first blush the conditions impose any insurmountable burdens. Focus on the approval process now turns to state agencies: the North Carolina Department of Environmental Quality for the ACP and West Virginia Department of Environmental Protection for the MVP. The NC DEQ recently rejected the erosion and sediment control plan for the ACP, but Duke Energy (a partner in the ACP project) indicated it will submit additional information rather than challenge the rejection. In September, the WV DEP vacated its decision certifying the MVP application complied with Section 401 of the Clean Water Act and stated it will reevaluate the complete application to determine CWA compliance. In short, while the FERC decision provides comfort, focus returns to the state level battlegrounds in the approval process. --- [Matthew P. Heiskell](#)

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## ● [Texas' Largest Power Generator Speeds Up Coal's Decline with Closure of Two More Plants](#)

*"Coal's decline in Texas accelerated this week as Luminant announced it would close three coal-fired power plants in early 2018. Combined, they account for 12 percent of the state's coal power plant capacity."*

**Why this is important:** The three plants earmarked for shuttering will reduce the utility's coal generation capacity by 37 percent. These three plants are capable of producing nearly 2,300 megawatts of electricity, sufficient to power nearly 2.1 million Texas homes. The Texas utility stated officials said cheap natural gas and Texas' competitive energy market have rendered these older power plants unprofitable, as generation by natural gas is \$12 to \$65 less than it is by coal, according to last year's report from financial advisory firm Lazard. Although driven by financial considerations, the announcement was applauded by environmentalists who considered the plants to be among Texas' largest polluters. --- [John C. \(Max\) Wilkinson](#)

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## ● [What's at Stake for Oil Markets After Trump's Iran Move](#)

*"Iran, already struggling to attract investors to its energy industry, may find things tougher still as U.S. President Donald Trump refuses to certify the nuclear deal that eased sanctions on OPEC's third-largest crude producer."*

**Why this is important:** President Trump indicated he would impose new sanctions on Iran's Revolutionary Guard, a branch of the military that owns many businesses, including some in the oil industry. Although Europe and Asia do not seem interested in re-imposing oil related sanctions, any new sanctions could choke off additional international investment in the Iranian oil and gas industry, which needs a reported \$100 billion in upgrades. The U.S. has the ability to punish international energy companies that conduct business with Iran, as many of these companies have significant operations and investments in America. --- [Gerald E. \(Gee\) Lofstead III](#)

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## ● [U.S. Shale to Help Power Shell's Multi-billion Dollar Chemicals Drive](#)

*"Royal Dutch Shell will begin construction of a new \$10bn petrochemicals site in the gas-rich Marcellus shale basin in the U.S. within the next 10 weeks as part of a radical growth plan for its petrochemicals business."*

**Why this is important:** Shell's construction of a petrochemical cracker plant in Beaver County, Pennsylvania, will further the Marcellus Shale's role in the global economy. Shell's ethane cracker, expected to start-up in the early 2020s, will supply European refineries with ethane. Many of these refineries will sell their products to Chinese manufacturers for use in the production of plastics, paints and textiles. --- [Christina S. Terek](#)

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## ● [EPA Chief: I'd 'Do Away With' Wind, Solar Tax Credits](#)

*"Pruitt told a crowd at a Kentucky Farm Bureau event that the credits stand in the way of utility companies making the best decisions about power generation. 'I would do away with these incentives that we give to wind and solar,' he said, referring to wind's production tax credit and solar's investment tax credit."*

**Why this is important:** A reduction or elimination of tax and investment credits would eliminate non-market based competitive advantages of wind and solar over more traditional fuel sources of coal, oil and gas. Wind power's 2.3 cent per KW/Hr produced tax credits begin their phase out this year and are currently scheduled to sunset in 2020. The credit allowing solar power to write off 30 percent of its investment terminates in 2022. According to EPA Chief Pruitt, elimination of the tax and investment credits would allow utilities to make real time decisions on fuel sourcing based on purer market realities unaffected by indirect subsidization. Pruitt acknowledged that only Congress, not EPA, could implement such a policy decision. --- [John C. \(Max\) Wilkinson](#)

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## ● [Oil Headed to \\$10? China May be in the Driver's Seat](#)

*"But alas, not all assets have been joining the party. Oil - incidentally trekking up on unrest in Iraq and questions about the Iran*

*nuclear deal - is set to finish the year with a whimper."*

**Why this is important:** China's electric vehicle policy and global interest in alternative energy may be the catalysts to plummeting oil prices in the next six to eight years, according to the cited analysts. China plans to build seven million electric cars by 2025 and spend \$60 billion on subsidies for production. Electric vehicles could cut crude oil demand by eight million barrels per day by 2040. --- [Gerald E. \(Gee\) Lofstead III](#)

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## EIA Energy Statistics

Here is a round-up of the latest statistics concerning the energy industry.

[Today in Energy - U.S. Coal Production](#)

[Today in Energy - U.S. Crude Oil Production](#)

[Gasoline and Diesel Fuel Update](#)

[Coal Markets](#)

[Drilling Productivity Report](#)

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