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● WELCOME!

Welcome to Spilman Thomas & Battle's weekly energy news e-blast - *Currents*. The purpose of this communication is to provide a synopsis of the top news stories for the week, but with a twist. We recognize that you may already receive emails regarding the most important energy news. Our goal is to provide you links to those stories, but also explain **why they are important** from a legal perspective.

Spilman's [Energy Practice Group](#) is committed to keeping our clients well-informed by providing accurate and timely assessments of emerging national and state energy developments. Our hope is that this weekly publication does just that. We believe in a client-first philosophy--selfless, hands-on, relentless and collaborative--and employ that philosophy in the delivery of our premium service.

As always, please give us your feedback, questions, and/or suggestions. At Spilman, we strive to provide a uniquely different experience that encourages clients to set a higher level of expectation from us.

Sincerely,
Spilman Thomas & Battle's Energy Practice Group

● [Appeals Court: Energy Officials Missed in Pipeline Review](#)

"A Washington appeals court says federal energy regulators fell short in evaluating the environmental impact of a natural gas pipeline that's carrying gas through Alabama, Georgia and Florida."

Why this is important: One simple sentence from a recent decision by the Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") should give everyone involved in fossil fuel infrastructure projects pause: *"It's not just the journey, though, it's also the destination."* The D.C. Circuit remanded to FERC its EIS to assess the environmental impact of the downstream emissions generated by the power plants that will burn the gas transported by the proposed pipeline. The court concluded that because FERC had the legal authority to prevent the emissions, it was obligated to consider the environmental impact of burning the fuel to be transported by the pipeline. This decision would seem to open Pandora's box for any project requiring a federal approval and compliance with the National Environmental Policy Act. -- [James D. Elliott](#)

● [A Coal Country Dispute Over an Alleged Trump Promise Unmet](#)

"The Trump administration has rejected a coal industry push to win a rarely used emergency order protecting coal-fired power plants, a decision contrary to what one coal executive said the president personally promised him."

Why this is important: The Trump administration's apparent refusal to implement the emergency provision in the Federal Power Act to maintain coal-fired power plants online seems to indicate that the administration is not as committed to stopping

coal power plant shut downs as previously believed. If this is the case, it suggests that more cautious energy and economic advisors to the President have held sway over those committed to a more aggressive policy to keep coal-fired power plants online, in particular those of Robert Murray, CEO of Murray Energy. If coal-fired plants face shuttering as scheduled, then grid reliability and coal miner job security -- at least in those mines committed predominantly to steam coal production -- will face increased risk, if Mr. Murray's predictions are correct. -- [J.C. \(Max\) Wilkinson](#)

● [Trump Administration Halts Research on Mountaintop Removal Coal Mining](#)

"The Trump administration has ordered researchers to stop work on an independent evaluation of potential health effects from mountaintop removal coal mining.....the Interior Department's Office of Surface Mining sent a letter Friday to the National Academy of Sciences, which it had contracted to do the independent review, asking it to stop its work immediately."

Why this is important: By restricting leases of federal lands and tightening regulations, President Obama used the Department of the Interior ("DOI") as a crucial tool in his fight against the use of fossil fuels. The DOI now has identified several priorities, including: American Energy, Jobs, and Regulatory Reform. By halting the aforementioned study, the administration is signaling that it will no longer use the DOI against the fossil fuel industries, but instead, use it to create jobs while still acting as a responsible steward of America's natural resources. -- [Kelly G. Pawlowski](#)

● [Federal Court Upholds State's Right to Stop Natural Gas Pipeline Under the Clean Water Act](#)

"Fossil fuel foes are claiming victory after a federal appeals court on Friday upheld New York's move to block a federally permitted interstate natural gas pipeline that failed to meet state water quality standards."

Why this is important: On August 18, 2017, the Second Circuit Court of Appeals upheld New York's blocking of a \$750 million federally permitted natural gas pipeline that would have violated state water quality standards. In 2014, FERC approved Constitution Pipeline's project proposal involving 124 miles of pipeline. Approximately 100 miles of the pipeline would cross through New York, including 251 water bodies and 87 trout streams in the state. The Second Circuit recognized that the Clean Water Act effectively provides states with a veto power over local water projects that violate that state's water quality standards, rejecting Constitution Pipeline's claim that FERC had exclusive jurisdiction over gas pipelines. The Court deferred to the state agency's decision largely because Constitution Pipeline failed to address certain water resource impacts during its state environmental review and also failed to consider alternative routes and less harmful methods of stream crossing, even after the agency made repeated requests for this information. Constitution Pipeline's perceived failure to cooperate with the state agency provided the Court with sufficient grounds to uphold New York's decision to block the project.

Until Congress modifies the Clean Water Act to strip states of their authority under the Act, energy companies should take care to cooperate with state environmental agency requests for information. Consider involving other ally companies early on in the process to provide more support for the project. -- [Dennise R. Smith](#)

● [In a First, U.S. Ships Coal to Ukraine](#)

"U.S. Cabinet officials, the U.S. envoy to Ukraine and representatives from XCoal were on hand for the first shipment of coal from a Pennsylvania facility to Ukrainian energy company Centrengo. U.S. Energy Secretary Rick Perry said coal sent from the United States would serve as a secure and reliable form of energy for Ukrainian consumers."

Why this is important: While strengthening the United States' position in the pierogi politics of Eastern Europe, the Trump administration has taken steps to fulfill its promises of relief to the U.S. coal industry by openly endorsing coal shipments to the Ukraine. This action bolsters the current policy of exporting liquefied natural gas to Lithuania and Poland. A primary goal of these activities is to counteract the Baltic and Slavic Regions' reliance on Russian natural energy and the resultant threat of Russian economic sabotage, while confirming U.S. support for the former communist countries. From a domestic standpoint, the policies provide an added bonus of additional markets for American coal, gas and oil. -- [Gerald E. \(Gee\) Lofstead III](#)

● ['Cyborg' Bacteria Deliver Green Fuel Source from Sunlight](#)

"Scientists have created bacteria covered in tiny semiconductors that generate a potential fuel source from sunlight, carbon dioxide and water. The so-called 'cyborg' bugs produce acetic acid, a chemical that can then be turned into fuel and plastic."

Why this is important: Using free energy from the sun is one of the consuming goals of renewable energy advocates, and as solar panels increase in efficiency, now up to the low 20 percent level, they will have an increasing role in the American energy mix. One of the impediments to development has been the low efficiency of photovoltaic panels. These "solar-enhanced" bacteria offer a huge increase in efficiency, up to a reported 80 percent, far higher than solar panels or natural photosynthesis. In the past, however, similar marriages of biology and technology have run into a host of problems as they attempted to scale up to achieve commercial success. Roadblocks have included difficulty managing the bacteria on a large scale, locating sufficient pure CO₂ to allow the conversion to acetic acid to take place, and cost-effectiveness when compared to standard industrial processes that produce the same substance. Furthermore, in situations where one of the activators is access to sunlight, only the surface will provide an opportunity for efficient solar activity. That might mean use of shallow containers, to maximize exposure area, but results in a greater risk of overheating. This is another system that is worth watching, but isn't ready yet for prime time. -- [David L. Yaussy](#)

Energy Transfer Suit Claims Greenpeace Incites Eco-Terrorism

"Energy Transfer Partners LP accused Greenpeace International, Earth First! and other groups of inciting terrorist acts and vandalism to generate publicity and raise money for their causes while hampering the Dakota Access pipeline operator's ability to raise money for projects."

Why this is important: Many environmental advocacy groups see radicalism as an effective form of fund-raising. In an exclusive interview with Spilman Thomas & Battle, Dr. Patrick Moore, founder of Greenpeace, stated that he left the organization because it abandoned science and reason "altogether" in pursuit of fund-raising. Dr. Moore advised energy companies not to engage or negotiate with Greenpeace because it is not interested in compromise as it is "against coal mining, fracking, copper mining, gold mining, all mining." -- [Nicholas S. Preservati](#)

If you have any questions regarding legal aspects of the energy industry, please feel free to [contact us](#).

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