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FEDERAL GOVERNMENT AFFAIRS UPDATES

GPA Midstream joins other trade associations in coalition letter

GPA Midstream recently joined other associations in a coalition letter to Justice, Army, and Interior Departments expressing deep concerns over recent federal actions that took place in North Dakota ignoring the rule of law in an attempt to halt infrastructure development. We wanted to share with you an article that was published in The Hill written by Devin Henry that focuses on the letter.

Energy groups slam Obama administration pipeline review

By Devin Henry, The Hill

A group of energy and manufacturing groups is criticizing an Obama administration review of permitting decisions for a controversial pipeline project in North Dakota.

In a letter to three administration officials on Thursday, the groups hit back at the Army Corps of Engineers and the Departments of Justice and Interior, which are reviewing whether the Army Corps followed proper procedure when it approved the Dakota Access Pipeline over the summer.

While the three agencies review the decision, they are withholding an easement that would allow construction of the \$3.7 billion pipeline on a stretch of federal land in North Dakota.

That decision, the group said, is improper and "effectively ignore[s] the rule of law in an attempt to halt infrastructure development."

"When your agencies upend or modify the results of a full and fair regulatory process for an infrastructure project, these actions do not merely impact a single company," wrote the groups, a collection that includes the National Association of Manufacturers, American Petroleum Institute, U.S. Chamber of Commerce, and 17 others.

"The industries that manufacture and develop the infrastructure, the labor that builds it, and the American consumers that depend on it all suffer."

A federal judge approved the permitting process for the Dakota Access Pipeline last month. Even so, a North Dakota tribe has sued against the project, saying it threatens cultural heritage sites and drinking water supplies in the region.

The dispute over the pipeline - like those that came before it - has galvanized both green groups in opposition and the energy and manufacturing sectors in support. Administration officials have said a final decision on the withheld easement, for a section of federal land spanning the Missouri River, will come within weeks.

Recent Clean Air Act case could force EPA to quantify job losses and employment shifts tied to its regulations

GPA Midstream has been actively engaging numerous federal agencies, such as the Environmental Protection Agency (EPA) and the Pipeline and Hazardous Materials Safety Administration over the past couple of years. In fact, to say that GPA Midstream members have been in the middle of a category 5 regulatory hurricane is an understatement.

Part of the regulatory process is for the agencies to conduct a cost benefit analysis. One of their jobs that they often overlook or do in an incomplete manner is evaluate the impact that the respective regulation will have on jobs in that respective industry.

Essentially, under section 321(a) of the Clean Air Act, it states that EPA "shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of [the Clean Air Act] and applicable implementation plans." So the court ruled that EPA violated the Clean Air Act by not adequately quantifying job losses and employment shifts tied to its regulations.

Although this case is about coal, its impact on the Clean Air Act and where and how EPA addresses the employment impacts of its regulations is important to note. Below is an article from E and E News that we wanted to share with you that explains in much greater detail what this means.

Judge rules EPA must weigh rule-related job losses

By Amanda Reilly, E&E reporter

Published: Tuesday, October 18, 2016 for the Northern District of West Virginia orders EPA to evaluate employment effects of its regulations

In a win for the coal industry and Murray Energy Corp., a federal judge yesterday ruled U.S. EPA violated the Clean Air Act by not adequately quantifying job losses and employment shifts tied to its regulations.

U.S. District Court Judge John Preston Bailey for the Northern District of West Virginia ordered EPA to submit a plan for evaluating employment effects "both generally and in the specific area of the effects of its regulations on the coal industry" within two weeks. Bailey's 64-page opinion said the plain language of the law and the legislative history - the judge quoted former Green Party presidential candidate Ralph Nader as proof - showed Congress meant to create "an express, unambiguous requirement on the agency of a continuing nature."

EPA's critics both on and off Capitol Hill were quick to cheer the ruling. National Mining Association CEO Hal Quinn said in a statement that "America's coal miners scored an important victory."

Senate Environment and Public Works Chairman Jim Inhofe (R-Okla.) hailed the news on social media. "This mirrors legislation I've sponsored for EPA to simply follow the law," Inhofe wrote on Twitter yesterday evening.

At issue is a provision in the Clean Air Act that states EPA "shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of [the Clean Air Act] and applicable implementation plans." It also says EPA must investigate threatened plant closures or reductions in employment.

Similar language first appeared in a House floor amendment to the Clean Water Act amendments of 1972. The following year, Congress added the provision to the Clean Air Act.

Murray Energy brought its lawsuit in 2014 and touted the litigation as being against the Obama administration's "war on coal."

The company said that while EPA had identified potential plant closures during the first decade of the Clean Air Act, the agency had since failed to assess the impact of its actions on the coal industry.

Before yesterday, EPA had already suffered a string of losses in the case. Bailey, appointed by President George W. Bush, has twice before rejected motions by the agency

to dismiss the suit.

He also rejected EPA's effort to block testimony by Jeff Holmstead, the agency's former air chief in the Bush administration (*E&ENews PM*, June 17).

In a decision that was later overturned by the 4th U.S. Circuit Court of Appeals, Bailey denied EPA's bid to prevent the deposition of Administrator Gina McCarthy.

Thirteen states led by West Virginia, the NMA and the U.S. Chamber of Commerce intervened in the suit on behalf of Murray (*E&ENews PM*, Aug. 23).

Bailey's opinion yesterday responds to a May motion by EPA for summary judgment without oral arguments.

'Mandatory obligation'

EPA argued that Clean Air Act Section 321(a) created a discretionary duty for the agency and that Murray lacked legal standing to bring the suit.

EPA further argued that it had evaluated the impact of its regulations on the coal industry, even if it didn't do so explicitly under the provision in question (*E&ENews PM*, May 3). The agency also wanted the court to exclude testimony from three of Murray's witnesses, including John Deskins, who prepares the annual economic outlook for West Virginia.

Deskins has called the "sharp acceleration in coal losses" in 2015 "a direct result of the regulatory policy change" reflected in EPA's Clean Power Plan, which the agency issued to lower carbon dioxide emissions from power plants.

Bailey rejected all of EPA's arguments.

"While the EPA may have discretion as to the timing of such evaluations," Bailey wrote, "it does not have the discretion to categorically refuse to conduct any such evaluations."

The judge found that the word "shall" in the provision creates "a mandatory obligation" for EPA to perform continuing evaluations of job losses resulting from its regulations. The legislative history also supports the mandatory nature of the provision, Bailey wrote.

Bailey cited Nader, who testified in front of a Senate subcommittee in the summer of 1971, saying that to ignore the "problem of environmental layoffs or close-downs" and "simply enforce the pollution laws" "would be too narrow a policy and a cruel one at that for workers."

Bailey wrote that "Congress unmistakably intended to track and monitor the effects of the Clean Air Act and its implementing regulations on employment."

Bailey also shot down EPA's arguments that Murray didn't have legal standing to bring the lawsuit in the first place, a procedural threshold under which parties must show that they are or will be directly harmed, and that the courts can provide relief.

Reasons for coal decline

The agency argued in part that a reduced market for coal was not directly traceable to EPA's failure to conduct employment evaluations.

But the judge found Murray's argument that EPA's actions have had a "coercive" effect on the power generating industry and forced companies to discontinue the use of coal was a sufficient injury under the standing doctrine.

"EPA argues that Murray Energy Corporation is larger today than it was in 2009, and so cannot be injured by the reduced market for coal, but EPA does not need to kill a company to injure it," Bailey wrote, noting that Murray grew larger through transactions with Consol Energy Inc. and a partnership with Foresight Energy.

Bailey further ruled that regulatory impact analyses and economic impact analyses that EPA does in conjunction with major rulemakings aren't substitutes for the evaluations required by the Clean Air Act provision.

EPA could appeal the ruling to the 4th Circuit. The agency yesterday said it was reviewing Bailey's opinion.

The court decision is likely to fuel EPA's critics who maintain that the costs of the agency's air regulations, including the Clean Power Plan and the new national ambient air quality standard, far outweigh the benefits.

"This is a great day for coal miners in the United States, and for all citizens who rely on low-cost electricity in America," Murray Energy CEO Robert Murray said in a statement. "We will continue to vigorously pursue this lawsuit, and all of our litigation initiatives, in order to protect the lives and livelihoods of coal miners and their families," he said. Aside from this case, Murray has five other pending lawsuits challenging Obama administration EPA regulations.

Bailey noted that congressional opponents of the agency might find use for the information gathered in employment evaluations.

"Accurate evaluation of substantial job loss would certainly cause heightened congressional oversight of EPA regulatory activities," Bailey wrote, "and provide critical information during the congressional appropriations process with respect to EPA."

[Click here](#) to read the opinion.

PHMSA's Gas Pipeline Advisory Committee will meet in December on the Gas Mega Rule

PHMSA's recently announced that its Gas Pipeline Advisory Committee will meet in Washington, D.C., on Dec. 7 and 8. The committee will begin to consider the Notice of Proposed Rulemaking (NPRM), "Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines" as published in the Federal Register (81 FR 20722) on April 8, 2016, which is also commonly referred to as the "Gas Mega Rule."

The proposed rule proposes to revise the Pipeline Safety Regulations applicable to the safety of onshore gas transmission and gathering pipelines; changes to the integrity management (IM) requirements and issues related to non-IM requirements, and modifications to the regulation of onshore gas gathering lines. GPA Midstream will be at the meeting and expects that PHMSA will most likely schedule additional meetings in January and possibly February on this proposed rule.

GPA Midstream meets with EPA Acting Assistant Administrator for the Office of Air and Radiation and White House's Office of Management and Budget

On Oct. 12, GPA Midstream met with EPA's Acting Assistant Administrator for the Office of Air and Radiation Janet McCabe on GPA Midstream's Petition for Review filed on Subpart W. Representing GPA Midstream were Melanie Roberts, Targa Resources, Laura Higgins, DCP Midstream, Matt Hite, GPA Midstream, and GPA Midstream outside counsel Hunton & Williams. In addition, Jeff Stovall, Crestwood, Sara Feucht, Targa Resources, and Adrienne Sandoval, Tesoro Logistics, joined on the phone for the meeting. The meeting's purpose was to see if EPA would be able to address some of the technical deficiencies with Subpart W. GPA Midstream is still in a holding pattern, waiting to see if EPA will consider GPA Midstream's requests.

On Oct. 24, GPA Midstream met with the White House's Office of Management and Budget (OMB) to discuss EPA's Proposed Information Collection Request (ICR) for the oil and natural gas industry. Jaron Hill, Williams, Adrienne Sandoval, Tesoro Logistics, Matt Hite, GPA Midstream, and GPA Midstream outside counsel Sidley Austin attended the meeting with OMB and EPA. GPA Midstream was pushing for some common sense reforms to EPA's proposal. Among other issues, GPA Midstream highlighted how the cost burden to comply with EPA's ICR was inaccurate and would cost the midstream industry much more than what EPA projected.

TECHNICAL/RESEARCH UPDATES

Results of recent Technical ballot

Voting closed Oct. 1 for the ballot put forth to the Technical Committee, Technical Section C - Product Specifications, and Technical Section H - Measurement and Quantity

Determination. Thanks to all who participated. Results of the individual items are as follows:

- Section C acceptance of updates to **GPA 2140 - Liquefied Petroleum Gas Specifications and Test Methods**: 50% Committee Participation; 5 Approve, 0 Negative, 1 Abstain
- Technical Committee acceptance of updates to **GPA 2140**: 57% Committee Participation; 21 Approve, 1 Negative, 3 Abstain
- Technical Committee archival of **GPA 2265 - Determination of Hydrogen Sulfide and Mercaptan Sulfur in Natural Gas (Cadmium Sulfate-Iodometric Titration Method)**: 57% Committee Participation; 23 Approve, 0 Negative, 2 Abstain
- Technical Committee archival of **GPA 3132 - Natural Gasoline Specifications & Test Methods**: 57% Committee Participation; 23 Approve, 0 Negative, 2 Abstain
- Technical Committee acceptance of updates to **GPA 8173 - Method for Converting Mass Natural Gas Liquids and Vapors to Equivalent Liquid Volumes**: 57% Committee Participation; 21 Approve, 0 Negative, 4 Abstain
- Section H acceptance of updates to **GPA 8182 - Standard for Mass Measurement of Natural Gas Liquids**: 67% Committee Participation; 18 Approve, 1 Negative, 3 Abstain
- Section H acceptance of updates to **GPA 8186 - Measurement of Liquid Hydrocarbon by Truck Scales**: 67% Committee Participation; 18 Approve, 0 Negative, 4 Abstain

GPA MIDSTREAM CONVENTION DEADLINES

2017 GPA Midstream Convention sponsorship, hospitalities deadline reminder

Companies interested in GPA Midstream Convention sponsorships should note that those spending at least \$1,500 on sponsorships (does not include Vendor Night) will be recognized as a "convention partner" by company logo in our promotional brochure that mails to more than 10,000 midstream industry professionals. The deadline to sign up for logo placement in the brochure is Nov. 13. Visit www.GPAconvention.org/sponsor-2017 to view available opportunities.

Contact [Crystal Myers](#) with questions about sponsorships.

The deadline to request both public hospitality spaces and hotel suites is Nov. 30. GPA Midstream will communicate space assignments in mid-January. If we have availability after we assign spaces based on the initial requests up until Nov. 30, those will be handled on a first-come, first-served basis.

Contact [Christine McMorris](#) with questions about hospitalities.

GPA MIDSTREAM/GPSA CALENDAR

November

2 - Appalachian Basin GPA Midstream YP Caffeinated Lunch

10 - North Texas GPA Midstream Annual Meeting

10 - Midcontinent GPA Midstream GPSA Data Book Overview Course

15 - Appalachian Basin GPA Midstream Q4 2016 Luncheon

16 - Houston GPA Midstream November Luncheon

17 - Rocky Mountain GPA Midstream Regional Conference & Technical Sessions

18 - Rocky Mountain GPA Midstream 2016 Holiday Party

[View details on events listed above](#)

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