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Letters

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President Trump's Executive Order Corrects Obama EPA's Overreach

by Chaim Mandelbaum, FME Law Exec. Director

On March 28, President Trump signed an executive order (E.O.) directing the EPA to reconsider the Clean Power Plan imposed by the Obama Administration. This order may temporarily halt the long running legal battle over the plan, thought it surely won't end it. This directive by the President is critical in moving the country away from the economy limiting approach to energy taken by the Obama Administration, and pushing towards a more prosperous and energy independent nation.

The order directs the Administrator of the EPA to "immediately take all steps necessary to review the final rules" regarding the three sections that make up the Clean Power Plan and then "if appropriate" to "suspend, revise, or rescind" those rules or else to "publish for notice and comment proposed rules suspending, revising, or rescinding the rules."

Three rules together make up what is known as the Clean Power Plan. Two were finalized by the Obama Administration while one is still pending. The first, the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" rule under section 111(d) of the Clean Air Act, regulates existing power plants. The second, the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units under Section 111(b) of the Clean Air Act regulates any new power plants that will be built or refurbishments of existing plants. Finally the proposed rule the Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations was intended to govern operations of power plants in places where the State refused to assist in participating in the Obama Administrations folly.

Both the rules on existing power plants and the one on any new power plants were already challenged before the D.C. Circuit by a coalition of State governments, unions, industry groups, and think-tanks on the basis that these rules go beyond the statutory and constitutional

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In This Issue

'Climate Change' Industry Focusing on Public Investments

by Chris Horner, Senior Legal Fellow

In February 2014, acting on tips received, E&E Legal requested records regarding "climate risk disclosure" (CRD) from the New York Office of Attorney General (OAG) under that state's Freedom of Information Law (FOIL). This "CRD" movement is part of a campaign to, in effect, coerce 'confessions' out of energy-related interests that catastrophic man-made global warming is a real problem, of which they constitute a significant part, that their reserves are worth little to nothing and their public filings and other statements constitute misdeeds and even fraud.

This new, legally dubious but politically explosive theory is that the companies have been deceiving the public about the dangers that carbon emissions pose to the climate. The ensuing document productions revealed the scheme to be a parallel one to the AGs' "climate-RICO" scheming that E&E Legal has exposed, and continues to pursue, with some timely requests to several states in Spring of last year.

The two campaigns even share multiple early participants from the green-group, investment and law enforcement crowds, including NY OAG, Rockefeller interests, and certain Wall Street activists.

Within two months of E&E sending in its "disclosure" FOIL, the Natural Resources Defense Council (NRDC) loudly announced it was partnering with one of the world's most powerful money-management firms, BlackRock, on an index fund for individuals and organizations looking to divest from companies targeted by anti-greenhouse gas campaigns. On March 13, BlackRock announced it was escalating its "climate risk" campaign as a priority initiative.

NRDC put nearly $70 million in the fund controlled by BlackRock, a $5-plus trillion firm that has emerged as an active participant with government at all levels – even referred to as a shadow government, amassing wealth in large part through government contracts.

Records obtained by E&E Legal show that NRDC approached public officials managing pension funds on behalf of the BlackRock fund seeking these fiduciary officers direct funds under their into this project of green activists, wealthy donors and Wall Street financiers to profit off of environmental policy that they advocate with very close friends in government.

In progressive circles, the NRDC-BlackRock partnership has been lauded as a pioneering move offering an important tool for climate-conscious investors, including foundations, universities and publicly run pension funds.

Arguably, this reflects just another tight-knit network of progressive philanthropists and environmental activists, coordinating with sympathetic government bureaucrats, in their chosen field of manufacturing 'grassroots' movements to promote policies that benefiting their own bottom lines. This network uses a variety of campaign-style tactics seeking to hobble targeted corporations either directly or by impeding their access to capital markets: ad campaigns, lawsuits, shareholder resolutions, calls for government regulations, and even placing activists in responsible "ESG" positions in financial institutions while moving out the insufficiently enthusiastic.

In many instances, wealthy individuals or organizations, attempting to conceal their role in driving these campaigns, rely heavily on nonprofit advocacy groups and others in their network of allies to attack the record of targeted companies, all under the cover of public interest advocacy.

Now, records obtained already by E&E Legal show an effort by NRDC to used their relationships among staff at the New York State Comptroller's office to lobby the Comptroller, Thomas DiNapoli about divesting and reinvesting into BlackRock's fossil free index – a request that was met with some internal ridicule despite the ham-fisted advocacy on its behalf by one former Sierra Club activist now on the inside.

The Comptroller's office granted the meeting, to the chagrin of Comptroller lawyers who warned that once the activists "start pitching a particular fund or manager or try to bring us to a specific investment opportunity to create some sort of critical mass, we could have an issue under our placement agent policy, not in the sense of a payment to the NRDC (which seems unlikely) but potentially the 'other benefit' they seek for their policy agenda… particular companies cannot be the subject of a 'pitch' by advocates or other not for profits."

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Revisiting the Original Climate Sin

by Steve Milloy, Senior Policy Fellow
As Appearing in the *Washington Times*

If President Trump wants to put an end to the hoax and economic disaster that is man-made catastrophic global warming hysteria, there's one order that is essential to issue: the Environmental Protection Agency (EPA) must reopen its "endangerment finding" for greenhouse gases.

The Obama EPA issued the endangerment finding in December 2009 as a threshold determination to the agency commencing the regulation of greenhouse gases as "air pollutants." In the endangerment finding, the EPA determined that carbon dioxide, methane and other greenhouse gases threaten the public welfare. This appalling finding then allowed the EPA to proceed with its Clean Power Plan, the regulation of carbon dioxide emitted from coal-fired power plants.

The endangerment finding was born in corruption and has aged worse.

Though Congress considered but refused to authorize EPA regulation of greenhouse gases as part of the 1990 amendments to the Clean Air Act, wily environmental activists were able to wrangle the less-than-competent Bush EPA into disastrous litigation. The resultant 2007 Supreme Court decision, Massachusetts v. EPA, allowed (not ordered) the EPA to regulate greenhouse gases in clear contravention of congressional intent.

While the Bush EPA never got around to finding that greenhouse gases threatened the public welfare, the Obama administration wasted no time in doing so. The Obama EPA rushed to issue its politically timed endangerment finding to prop up the flailing 2009 United Nations climate meeting in Copenhagen.

There is reason to believe, based on EPA staff emails obtained through the Freedom of Information Act, that the Obama EPA may have predetermined the outcome of the endangerment finding before the rulemaking process commenced. These emails show a disturbing history of Obama EPA staff working covertly with green activist groups to shape major regulatory efforts like the Clean Power Plan.

So it is quite conceivable, if not likely, that similar collusion occurred with the endangerment finding. This collusion could easily be investigated by the Trump administration, providing the Obama EPA staff didn't destroy federal records on its way out the door.

The endangerment finding was issued in the wake of the revelations from the November 2009 Climategate scandal, which revealed, among other things, efforts by parts of the climate science community to manipulate scientific data and study results, to cover up such manipulation and to silence critics. Although the EPA's endangerment finding (as well as the political climate amid which the Massachusetts v. EPA decision was issued) relied in great part on the controversial Climategate data and studies, the agency refused to reopen the public comment period for the endangerment finding to explore the ramifications and implications of Climategate.

The endangerment finding is also scientifically suspect. It ignored the then-ongoing global warming pause that we may possibly still be experiencing. According to NASA satellite data, the most reliable temperature data we have, 2016 was not warmer than 1998, despite there being 10 percent more carbon dioxide and 4.5 percent more methane (which is reputed to have 20 times the warming potential of carbon dioxide) in the atmosphere. We've also experienced a hurricane drought, fewer tornadoes and declines in other extreme weather events and disasters despite the aforementioned significant increases in atmospheric greenhouse gas levels.

In addition to the procedural rulemaking problems associated with the Obama EPA endangerment finding, there are climatic factual realities and new science that also beg to be reconsidered — including the overlooked benefits of atmospheric carbon dioxide. Not only is it necessary for life as plant food, more of it promotes more plant growth and more food for a growing world population.

But didn't a federal court come down on the EPA's side on the endangerment finding? Yes, but only in the sense that the agency technically and superficially complied with the law — that is, there was a rulemaking, and the EPA accepted public comment and provided an explanation for its ultimate decision. There was no actual review of climate science or Climategate, much less agency collusion with activists.

If all that is not enough, Mr. Trump should realize that even if he were to repeal the Obama Clean Power Plan but leave the endangerment finding behind, the green activist groups and their state allies will take him to court and force his EPA to issue his own Trump power plan to reduce greenhouse gas emissions. That will not help to fulfill any campaign pledges about unleashing the American energy industry.

There should be no political worries in the Trump administration about opening up the endangerment finding. Mr. Trump campaigned on the job-killing climate issue and the reality that the EPA is an out-of-control and overreaching regulatory agency. He was, in fact, elected to take on the rogue EPA, especially with respect to Obama administration abuses.

Finally, none of this is to prejudge the outcome of a Trump administration review of the endangerment finding. The process should be open and transparent — for the first time providing a forum for climate skeptics and alarmists to debate in public. Bring your best science and leave the invective and ad hominem attacks at home. May the most persuasive side win. But by all means, let's finally have this vital debate. ❐

Steyer's Russia Connection

by Craig Richardson, President
As Appearing in the *Daily Caller*

Billionaire activist Tom Steyer's political career has truly been plunging. The self-proclaimed eco-hero has slipped from 5% to 4% in a poll of possible contenders for the California governorship next year. These abysmal polling results place Steyer at the bottom end of an eight-person field of potential candidates. Given a typical survey's margin of error – between 3% and 6% – one could easily say Steyer may not even register at all in the minds of California voters.

That has to be disappointing news for a man who has already spent $174 million of his own money in the last two election cycles working to raise his political profile. So far, it appears Mr. Steyer has virtually nothing to show for his troubles. Since President Trump was elected, he has been searching for ways to become relevant and has even resorted to crowdsourcing for ideas.

Judging by a series of tweets employing sharply worded rhetoric, Steyer believes he may have found a way to raise his profile: Politically tying the Trump administration with Russia and the oppressive regime of Vladimir Putin. In a February 14 tweet, he issues the call to action: "Call your member of Congress. Demand an immediate investigation into Trump & the Russians." Steyer was hammering the "Russia issue" in early December, tweeting, "Trump would make Russia our basic partner—a totalitarian regime based on fossil fuels & run by a former KGB officer."

But straight from the "You-Just-Can't-Make-This-Stuff-Up Department," Steyer has had his own shadowy connections with Putin's inner circle and KGB operatives.

With Steyer serving as senior managing partner of Farallon Capital Management, which he founded, the hedge fund invested in Geotech Oil Services in 2008, one of the largest oilfield service companies in Russia. The importance of foreign capital investment in Russian energy cannot be exaggerated. Oil and gas revenues provide between 21% and roughly 50% of the Russian government's funding, depending on which source one believes. Following the Russian takeover of Crimea, America's European allies were in the difficult position of having to replace their Russian energy supply in a hurry.

In 2010, Steyer sold part of his hedge fund's holdings in Geotech to the Volga Group, a privately held investment group that manages assets on behalf of Russian billionaire and Putin intimate Gennady Timchenko. The U.S. Department of the Treasury specifically named Timchenko as being among "those being designated for acting for or on behalf of or materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of, a senior official of the Government of the Russian Federation." It noted that "Timchenko's activities in the energy sector have been directly linked to Putin." A U.S. State Department cable made public by WikiLeaks went even farther, noting that Timchenko, the man with whom Steyer enjoyed a business relationship, "is rumored to be a former KGB colleague of Putin's." Responding to Putin's invasion of Crimea in 2014, the State Department targeted Timchenko with sanctions.

It has also been reported that under Steyer, Farallon's activities in Russia fell under "intense scrutiny" in the late 1990s and early 2000s for its alleged involvement in "illicit attempts to capitalize on the economic liberalization of the former Soviet Union."

Perhaps it is only coincidence that Steyer's war against America's energy producers eerily corresponds with Putin's covert efforts to subvert American oil and gas production through environmental propaganda efforts focused on fracking and pipelines. According to a January 6 analysis by the Office of the Director of National Intelligence, "this is likely reflective of the Russian Government's concern about the impact of fracking and U.S. natural gas production on the global energy market and the potential challenges to Gazprom's profitability." Gazprom is Russia's state-owned oil and gas monopoly. Indeed, a much greater threat than sanctions comes in the form of competition from abundant and less expensive American oil, which is now putting a squeeze on the Russian economy (the U.S. overtook Russia and Saudi Arabia as the largest combined producer of oil and gas in 2013). Russian revenues from oil and gas exports fell by 17.7% just between 2015 and 2016 alone and amounted to $73.676 billion.

And then there's the matter of the Sea Change Foundation, which was exposed in a 2014 report by the U.S. Senate Environment and Public Works Committee for its major funding from Klein Ltd, a Bermuda-based shell corporation closely connected with Putin confidante Leonid Reiman, Russia's state-owned oil giant Rosneft, and Russian energy investment groups including Firebird New Russia Fund and Vimpelcom Ltd. In 2011, according to the committee report, Klein channeled more than $23 million to a "Who's Who" list of anti-fracking groups, including the League of Conservation Voters, the Sierra Club and the Natural Resources Defense Council. Most interesting of all, in the period from 1997 to 2015, Sea Change donated more than $64.8 million to the Energy Foundation, a "pass-through" financing organization to which Steyer's Tomkat Charitable Trust donated $4.15 million. Having passed through Sea Change, the tainted funds were then disbursed to other anti-fracking groups, including the Blue Green Alliance Foundation, Environmental Defense Fund, the Rockefeller Family Fund and many others.

All of this is not to suggest that Steyer is a secret agent for the Kremlin. But it further burnishes his reputation of epic hypocrisy and exposes his desperate bid for relevance. When his insincere attacks on the "Russia issue" inevitably fall flat, we can count on him to chase after another section of the sky he claims is falling. ❐

Public Records on GMail

by Matthew Hardin, FME Counsel

Today government employees increasingly turn to GMail, text messaging, and phone "apps" for personal communications. So long as those communications are personal communications, there's nothing wrong with that. But what happens when government employees use Gmail to communicate with fellow staff about work-related topics?

While federal courts have made clear for decades that government records are covered under the Freedom of Information Act even when government employees generate or house those records on private servers, state courts have been far less clear. When the former Secretary of State, Hillary Clinton, was caught using a private server, she admitted a mistake and was forced to turn over the contents of that server to the government. In the states, however, government employees have been much more successful keeping records on private accounts out of the public's reach.

The California Supreme Court recently ruled in City of San Jose v. Superior Court of Santa Clara County that public records created or stored on personal email accounts are still accessible under state transparency laws. Previously, California had held that public records laws did not require the state to search or produce records from any employees private email accounts – even if such records related to public business. The old approach allowed employees to shelter records from public view, even when those records reflected correspondence or meetings with lobbyists, special-interest groups, or political campaigns. Luckily, the California Supreme Court has reversed the tide.

Unfortunately, in states other than California, government employees can still use gmail accounts to hide public records from view. In New York State, for example, courts have held that a requester must prove that public records exist on a private email account, before the court will order that account to be searched. In arguments before the New York County Supreme Court in November, E&E Counsel asked the court how such a burden could ever be met. After all, the law seems to require requesters to produce information that a search will uncover, before such a search will be ordered. Unfortunately, the New York Courts have not seen fit to relax this impossible burden on citizens and the public who just want access to public records.

Things are even worse in Vermont, where E&E Legal currently has two cases pending against the Attorney General. One Court in Chittenden County, Vermont recently ruled that courts had no jurisdiction over employees who had left government service. Under that ruling, an employee who had public records stored on his Gmail account – or even in his garage or home office – would never be subject to open records laws in Vermont. All manner of things could be hidden in the dark by former government employees, simply because the courts ruled they had no jurisdiction over individuals who had left government service. The Chittenden County court didn't stop there, however. A few days after its ruling that it lacked jurisdiction over former government employees, it also ruled that Vermont's transparency laws do not cover private email accounts even for current government employees. High-powered lobbyists and special interests, therefore, are now free to correspond with public officials in Vermont on Gmail or via text messaging, without any fear that their activities might be brought into the light.

The public deserves to know what it's government – and its government officials – are up to, and that bureaucrats should not be allowed to hide in the shadows simply because they use Gmail or a private server for work. E& E Legal has even moved to join William Sorrell, the former Attorney General of Vermont, to one of its lawsuits as a defendant so that he can answer for his actions personally rather than through a bureaucracy that demonstrates no interest in transparency. We expect to fight throughout the spring to hold government employees – and former government employees – responsible for their actions through the power of transparency laws. ❐

Clean Power Plan E.O. (Cont.)

limits of power granted to an agency like the EPA. The Supreme Court had already issued a stay preventing the rule on existing power plants from taking effect, a rare decision, highlighting how unusually and divisive the rule is. The rule on existing power plants had already be argued before the DC Circuit in September of 2016, with a ruling expected soon, while arguments on the new power plants were scheduled for April 2017.

The E.O. however directs the Department of Justice to seek an abeyance of these cases while the EPA reviews and reconsiders these rules. This means that the government will ask the Court to avoid issuing a ruling that may prove unnecessary since the agency may decide to rewrite or scrap the regulations put forth by the Obama Administration.

This Exec utive Order was needed from both an economic and legal standpoint. The Clean Power Plan would have imposed an enormous economic cost, driving up the price of electricity by forcing unnecessary and costly expenses to existing power plants or else forcing power companies to shut down working plants long before their lifespan expired. It also helped cause a collapse in the value of coal, putting coal miners out of work. The benefits of the plan however were harder to see. Even the Obama Administration admitted the plan would at best reduce global temperatures of .01 degrees Celsius. Far more likely the effect would have been negligible.

Legally the Clean Power Plan represented an enormous power grab for the EPA, giving it the power to reshape the national electricity market, an area that traditionally has been regulated by state governments, not by federal bureaucrats. It would have allowed the EPA to force power companies to direct their investment dollars towards power generation sources that the Obama Administration found acceptable in order to "offset" the actual working plants that generated electricity today. This was certainly not the sort of power Congress intended to grant to the EPA in the Clean Air Act.

The E.O. also directed federal agencies to stop using the artificial "Social Cost of Carbon" which was a pricing scheme devised by the Obama Administration that set an artificial cost for each ton of carbon that federal agencies were required to use when undertaking any cost/benefit analysis for projects and programs. Instead, agencies will return to more tried and true practices for estimating costs and benefits based on the decade old guidance of the Office of Management and Budget. This move follows along with other orders the Administration has issued in recent weeks, such as suspending the economically devastating "Waters of the United States" rule that would have put virtually all waterways under EPA control, ordering a review of the extremely expensive increase in CAFÉ standards imposed by the Obama Administration, and ending the Obama moratorium on leasing federal lands for energy development, such as coal mining. Together these moves show the determination by this Administration to put economically sound policy first, instead of policy which raised costs while doing little for the environment. ❐

'Climate Risk Disclosure Campaign' (Cont.)

The Office began backing away, after these warnings suggesting that NRDC, in doing the bidding of its business partner, may have crossed the line from environmental activism to financial opportunism, particularly in light of the fact that both NRDC and BlackRock have been active in the attacks on the fossil fuel industry.

Other records show Comptroller staff expressing concerns about, and detailing, the questionable assumptions and approach of fossil fuel divestment legislation proposed by State Senator Liz Krueger and Assemblyman Peter Ortiz. Interestingly, one of the bill's co-sponsors chose to contact executive branch staff on the matter "off-line", using his AOL account though obviously aware of his position, and FOIL.

E&E Legal also uncovered an SICS Google Group — Shareholder Initiative on Climate and Sustainability is a working group of Ceres' Investor Network on Climate Risk. Participants include New York State and City Comptroller Offices officials, reps from various state treasurer offices (e.g., Vermont, Connecticut, Rhode Island, Pennsylvania), state and city employee funds, and other government officials.

These Google Group emails hint at the extent of discussions between public pension and investment officials with foundation, social justice, environmentalist and labor activists — as well as Rockefeller & Co. staff, PIMCO, and other Wall Street outfits — about how investors can prod companies to adopt "climate" policies also being promoted through the broader lobbying campaigns to mandate such actions.

One particularly striking email was sent from Mark Kresowik, director of the Sierra Club's "Beyond Coal" campaign, in response to a thread describing their movement's history (or "the powerful ecosystem build [sic] by [environmental, social and governance]/[Principles for Responsible Investment] public funds) "started back in 1999 by [Interfaith Center on Corporate Responsibility], [], Trillium [Asset Management, also involved in the SEC lobbying push with NY OAG and Rockefeller], Domini [Social Investments], Friends of the Earth and Christian Brothers & others" which "prompted the banks to set up the infrastructure and insights today to understand both the climate risks related to an industry in decline".

In one story circulated among the group they boast "Environmental, social, and governance considerations now affect $8.72 trillion in professionally managed assets, which is one-fifth of the total of invested assets under professional management." Participants include the Union of Concerned Scientists' and CSR Strategy Group activists on their GMail, such that FOI requests seeking, e.g., UCS correspondence would not produce these.

Kresowik argues that mobilizing the financial industry is key to combatting Big Oil, just as it was in combatting the coal industry. He noted that "one of the most important steps to get here involved replacing one of the ESG staff at JPMorgan Chase, although I'm not going to go into that particular strategy in writing."

Records received to date reveal where troves of further instructive records are kept and have been accessed by public employees subject to transparency and record keeping statutes. E&E Legal is now following up on these original findings in numerous jurisdictions' open records laws to bring pubic further details of this collaboration, and what it suggests about how the investment officials approach their fiduciary obligations in the face of apparently irresistible ideological agendas.

E&E Legal intends to leave no stone unturned, working to reveal the unethical actions of every state official involved in the scheme. We have already submitted open records requests to numerous states and city governmental entities, from the East Coast to the West. Granted sufficient resources, we intend to carry these projects to their conclusion just as we are doing with the related "climate-RICO" effort. ❐

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