

## **One Year Into Obama's Climate Action Plan, Limits on Executive Actions Remain Obvious**

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June 24 (BNA) -- A year after President Barack Obama announced he wouldn't wait for a reluctant Congress to address climate change and unveiled a plan for tackling the issue, it is becoming increasingly clear his administration will have to move at a fast clip to get a package of regulatory actions finalized before his second term ends two and a half years from now.

While the verdict on the success of his go-it-alone strategy likely will have to wait until Obama leaves office, it hinges largely on the survival of regulations that for the first time would put carbon pollution limits on about 7,000 power plants (106 DER AA-1, 6/3/14). The EPA estimates that by 2030, these limits will lead to a 30 percent reduction in power plant carbon emissions below 2005 levels.

Those limits, along with rules for new power plants, will almost surely be challenged in court by industry even before Obama leaves office in January 2017—if they ride out attacks in Congress that have only snowballed since their unveiling. The survival of the carbon pollution limits also could hinge on whether Republicans, who already control the House and generally see the rules as an end-run around congressional authority, gain control of the Senate this fall.

But the president in his 2014 State of the Union speech said the U.S. has to “act with more urgency” on climate change, saying the debate over whether the planet warming is “settled.” His administration sees the climate plan, and particularly the power plant rules, as the best option for galvanizing action by other nations in talks toward a 2015 global climate agreement that for the first time would require actions by developed and developing nations alike beginning in 2020.

In the year since Obama unveiled his plan in a June 25, 2013, speech at Georgetown University, his administration has rolled out what supporters and opponents agree are significant policies beyond the EPA power plant proposals, including a methane strategy to cut emissions from new landfills and coal mining operations on federal lands; policies to end U.S. aid to overseas coal-fired power plants; and a push for a rapid phaseout under the Montreal Protocol of hydrofluorocarbons, originally developed as alternatives to other ozone-depleting substances (123 DER A-41, 6/26/13).

- Power plant carbon dioxide limits (proposed): EPA June 2 unveiled standards it expects will cut emissions 30 percent by 2030 from 2005 levels at existing plants; EPA also proposed rules for new and modified plants.
- Corporate average fuel economy (CAFE) and greenhouse gas reductions for medium- and heavy-duty trucks (proposed): Obama Feb. 18 announced EPA and Transportation Department rules and wants them finalized by March 2016.
- Methane emissions (ongoing): White House released methane strategy in March to cut emissions from coal mines that operate on public lands and new landfills, but put off decision on regulating oil and gas sector.
- Hydrofluorocarbon reductions (ongoing): U.S. working with China to phase down use and production of HFCs, a highly potent greenhouse gas, under the Montreal Protocol.
- Clean energy permitting on public lands (ongoing): Obama directed Interior to permit 10 added gigawatts from solar, wind and other renewable energy by 2020.

- End U.S. aid to new overseas coal plants (ongoing): U.S. Export-Import Bank and Treasury Department issued policy statements in 2013 declaring U.S. will vote no at World Bank and other multilateral institutions on such projects that lack technologies to capture and store carbon dioxide. While Obama's climate plan was initially hailed by environmental groups and congressional Democrats, those supporters have gradually focused more in the last year on what was also missing from the president's plan. It is silent, for example, on EPA regulation of greenhouse gas emissions from petroleum refineries, U.S. regulation of emissions from aircraft and whether to use the Interior Department's authority to cut emissions from oil and gas drilling on public lands.

Obama for his part remains steadfast behind his climate action plan. Earlier this month he touted the power plant rules as “one of the most ambitious steps” any nation has taken to address climate change. The electric power sector accounted for 32 percent of total U.S. greenhouse gas emissions in 2012, and emissions related to electricity production have increased about 11 percent since 1990, partly due to increasing demand for electricity, according to the EPA.

The EPA has until June 2015 to finalize the carbon limits for existing power plants unveiled by the agency June 2. States would take the lead in implementing the rules and have until June 30, 2016, to submit their plans to the EPA. Meeting that mid-2016 timetable could be crucial to the rules' survival if voters elect a Republican to succeed Obama, whose term ends in January 2017.

### **Limited Policy Options Without Congress**

Some environmental groups argue there is still time for Obama to expand the regulatory reach of his plan, particularly in curbing methane, which accounts for about 9 percent of U.S. greenhouse gas emissions but has 20 times the global warming potential of carbon dioxide. A White House methane strategy issued in March essentially punted on whether the EPA should move to regulate methane emissions from the oil and gas sector (61 DER A-35, 3/31/14).

But Obama can only do so much without congressional approval, particularly its authority to approve spending on big-ticket items such as a \$1 billion climate resilience fund, needed to implement sections of the president's climate plan that called for greater assistance to coastal areas and other regions to help them prepare for more severe and frequent weather events intensified by climate change.

“One of the main premises behind the climate action plan is it has required no new money and no congressional action, and that meant such a wide playing field for what the president could do,” Dan Weiss, director of climate strategy for the Center for American Progress, told Bloomberg BNA. “But that also means some important things can't happen without congressional action,” Weiss said, which worries the administration's supporters as they look ahead to fall elections and the very real prospect of a Senate controlled by Republicans, many of whom continue to question whether the Earth is warming or if humans are the cause.

With the House controlled by Republicans, Congress is unlikely to give Obama additional authority anytime soon, but a Republican majority in the Senate could put important pieces of the climate plan in jeopardy.

“If there is a significant increase in Republicans in Congress, they undoubtedly will use every tool they have to block every element [of the plan] they can, particularly the climate resilience plan” with its \$1 billion price tag,” Weiss said. “So the president is going to need to get out his veto pen if Republicans win the Senate in order to keep them from blocking these policies,” he said.

Weiss said an “ultimate accounting” of the impact of the climate action plan will have to wait until the end of Obama's second term when he should have all of the policies in place, including the final power plant rules. But he said there is still room in the meantime for more ambition.

“There is no reason EPA can't work to develop carbon pollution limits from refineries,” Weiss said, adding that Interior has been slow in moving to control methane from drilling on public land. A December 2013 report by a House-Senate task force of Democrats who support climate action concluded that Interior has “significant authority” to cut methane emissions but has been too slow to take action.

Obama's climate plan also includes expanded programs or new policies to prepare the U.S. for increased flooding, sea level rise and other climate impacts, including a climate data initiative to make information from the National Oceanic and Atmospheric Administration and other federal agencies available to states, communities and businesses.

The president in January brought back to the White House John Podesta, who was former President Bill Clinton's chief of staff, to shepherd Obama's power plant rules and other elements of the climate action plan.

### **A Tight Deadline of Two Years at EPA**

The EPA's top priority in the time remaining in the Obama administration will be to finalize—and prepare to defend—the limits for existing power plants as well as separate rules that would regulate future and modified power plants.

For the EPA's part, the agency remains upbeat about the prospect of meeting Obama's deadlines, particularly the June 2016 one for states to submit plans to reduce their emissions as set out in the power plant rule. The agency will “absolutely” meet the deadlines Obama has set, Janet McCabe, the EPA acting assistant administrator for air and radiation, told Bloomberg BNA in a June 20 interview.

“We're very excited to be able to move these programs forward and deal with the hard issues that are inevitable,” she said.

The EPA has begun to review comments submitted for the agency's proposed carbon dioxide performance standards for new fossil fuel-fired power plants, McCabe said, but added that it is too early to know whether the limits will be revised in response to that input.

But the relatively aggressive timetable the president gave the agency has left industry and environmental groups questioning whether the EPA now is hamstrung from launching any other significant regulatory actions to cut carbon pollution.

“I think they have so much on their plate now, if they can accomplish half of the things on [it], they can claim victory,” Richard Alonso, a partner at Bracewell & Giuliani LLP, a law firm that represents energy clients, told Bloomberg BNA. “Everything else is going to be that much more difficult.”

Regulating power plant emissions is relatively simple, at least technologically, compared to cutting emissions from other industrial sources such as boilers or cement production, Alonso said, or petroleum refineries and pipelines. He said he expects the EPA ultimately to turn its attention to regulating those sectors but it is unlikely to do so in the two and a half years left in Obama's presidency, given the agency's already crowded regulatory agenda.

Supporters of climate action, including Vera Pardee, a senior attorney at the Center for Biological Diversity, told Bloomberg BNA the EPA could begin regulating greenhouse gas emissions from other industrial source categories as it periodically updates its existing new source performance standards, which must be reviewed every eight years. So far the agency has not taken that step. While Obama may have tried to contain political opposition to regulating greenhouse gas emissions, his decision to focus on power plants has done nothing to assuage congressional Republican opponents, Pardee said.

### **Challenge of Maintaining Stringency of Rules**

Other environmental groups say that rather than pushing the EPA to regulate sources beyond power plants, they are staying focused on strengthening the power plant rules, or at least ensuring they are not weakened in response to industry opposition and other political pressure in the year ahead.

“The existing source proposal is a robust structure, and the state goals are based on EPA's analysis of what each state can achieve, but we think there are ways to make it more stringent,” Joanne Spalding, managing attorney at the Sierra Club, told Bloomberg BNA. For example, she said, the EPA “underestimates [the] renewable potential” in many states that easily could support more solar, wind and other clean energy projects, and the agency could press states to squeeze out more energy efficiency gains, she said.

Kevin Bundy, a senior attorney at the Center for Biological Diversity, told Bloomberg BNA the EPA's power plant limits are too modest and don't require significant emissions cuts from natural gas-fired power plants. The EPA's concentration on power sector emissions has come at the expense of regulating other emissions sources, he said.

### **Keystone Not in Plan, Though Still Relevant**

One high-profile issue left untouched in the climate plan is the Keystone XL pipeline, which would transport tar sands oil from Canada through the U.S. and has been targeted by environmental groups who say the carbon-intensive nature of getting the oil would only worsen climate change.

Obama made clear in his climate plan speech a year ago that a final decision on the project would hinge in part on its impact on climate change.

Approval “requires a finding that doing so would be in our nation's interest,” Obama said, which “will be served only if this project does not significantly exacerbate the problem of carbon pollution.”

“The net effects of the pipeline's impact on our climate will be absolutely critical” to whether the project goes forward, Obama said. “It's relevant.”

Business groups argue that Obama has continually delayed a decision on a project that could add thousands of jobs, even as his power plant rules are poised to raise energy prices and hurt job growth. Keystone supporters also say that rejecting the pipeline will not impact emissions as the tar sands oil will still be produced, but transported by other means, including rail to the U.S. and pipelines to Canada's west coast.

### **Divisions Fall Along Party Lines**

Congressional Republicans have spent much of the past year chipping away at Obama's climate proposals, arguing that he and other Democrats are downplaying or even ignoring how the plan might affect energy prices and jobs in coal regions.

Senate Minority Leader Mitch McConnell (R-Ky.) and other Republicans are attacking Obama's plan on multiple fronts. McConnell alone has tried to force a floor vote on his bill to block the EPA power plant rules; vowed to overturn the rules with a resolution of disapproval using fast-track procedures under the Congressional Review Act; and readied language to be attached to fiscal year 2015 spending bills that would bar further work on the regulations .

McConnell and other Republicans argue that Obama's plan bypasses Congress—which consistently has rejected climate change legislation, including the collapse of a broad Senate climate bill in 2010—and will only hurt U.S. competitiveness if China, the world's top emitter, doesn't take similar actions.

“Clearly, he's usurping our authority and going around Congress, which debated that issue and did not impose a cap and trade system,” Sen. John Hoeven (R-N.D.) told Bloomberg BNA. “So he's going around [Congress] with a regulatory fiat.”

“This idea that if he leads, everyone is going to follow—that is not going to happen” with U.S. unilateral action to cut its own emissions, said Hoeven, who argues the EPA power plant limits will only siphon away capital that could be invested in low-carbon technologies such as systems for capturing and storing carbon in geological formations.

“We can export our technology. We cannot export our regulations,” Hoeven said.

Sen. Orrin Hatch (R-Utah), the top Republican on the Senate Finance Committee, told colleagues on the Senate floor March 11 that Obama and other Democrats should be “trying to find real solutions for the American people instead of trying to please their liberal base with alarmist rhetoric about climate change and false promises about the future of energy production.”

“Increasing the cost of energy, which this plan would surely do, will not only make our struggling manufacturing sector less globally competitive,” the Utah Republican said. It also will “impose costs directly on the American people in the form of higher prices on electricity,” he said.

Democrats such as Sen. Ben Cardin (Md.) told Bloomberg BNA that Obama had little choice to act given congressional refusal to move even modest energy bills in recent years.

“The results speak for themselves,” said Cardin, who called the president's policies “sensible” and noted that U.S. emissions continue to decline. Since 2005, total U.S. emissions have been cut about 10 percent, according to the EPA.

### **U.S. Leadership Key to 2015 Paris Talks**

Administration officials and many environmental groups say Obama's climate plan signals that the U.S. is ready to lead in United Nations talks toward a 2015 global climate deal to be finalized in Paris, under which developed and developing nations are to take action to cut emissions beginning in 2020. Supporters say Obama's decision to go it alone on his climate action plan contrasts with the eight years of opposition to any mandatory emissions caps under eight years of President George W. Bush. In 2001, Bush essentially withdrew the U.S. from the Kyoto Protocol, citing concerns that its mandatory emissions caps could hurt the U.S. economy.

“Many countries think the U.S. is way behind the curve on climate action, so of course they'd like to see more,” Elliot Diringer, who tracks the climate talks as executive vice president of the Center for Climate and Energy Solutions (C2ES), told Bloomberg BNA.

“But many see that Obama is trying to deliver what he can, given the domestic constraints, and that the U.S. is committed to getting a deal in Paris—that's helped improve the negotiating dynamics” in the UN talks, which often pit richer developed nations against poorer developing nations, Diringer said.

Whether the U.S. is viewed as a leader in the talks will depend in part on what commitments it puts on the table for the post-2020 climate deal; it and other top emitters have vowed to do so in early 2015.

### **Rules Crucial to Meet 17 Percent Reduction Pledge**

The EPA power plant rules—along with other regulatory actions the administration already has taken to ratchet up vehicle efficiency requirements for cars and light trucks and proposals to double the efficiency of heavy-duty diesel-fueled trucks—are critical if the U.S. is to meet Obama's 2009 pledge to reduce emissions 17 percent below 2005 levels by 2020.

Environmental groups now analyzing the EPA's proposal say the U.S. is likely to make good on that pledge—if the power plant rules aren't significantly weakened in the agency's final version, delayed or quashed by the courts, or blocked by congressional opponents.

Ross Eisenberg, vice president of energy and resources policy for the National Association of Manufacturers, said the group is not opposed to the U.S. joining an international climate accord but said Obama's unilateral move to cut U.S. emissions could put its manufacturers at a competitive disadvantage if they face increased electricity prices at home and developing nations failed to take similar actions.

“Our concern is, if those [emissions] come down, then they are probably going up somewhere else” around the world, Eisenberg said at a June 17 Environmental Law Institute forum on the global climate talks. “And if they're going up somewhere else and we don't have everybody else on board” agreeing to cut their emissions, “how does that help anybody?” he asked.

The manufacturers' association will “be in the cheering section” supporting negotiators in Paris in late 2015, Eisenberg said, but wants a deal that avoids leaving the U.S. “just hanging out there” and on the hook for making unilateral reductions.

For his part, Obama tried to head off industry and congressional critics days before the June 2 unveiling of the power plant carbon pollution rules, arguing he is taking reasonable steps in targeting the largest source of U.S. carbon dioxide emissions. He noted that nearly a dozen states including California have moved over the last decade to cut power plant carbon pollution.

The idea is nothing new, Obama said in a May 31 radio address. “It's just time for Washington to catch up with the rest of the country.”