

Pruitt's Legacy At The EPA: Big Goals, Mixed Results

By **Juan Carlos Rodriguez**

Law360 (July 6, 2018, 8:43 PM EDT) -- Outgoing U.S. Environmental Protection Agency Administrator Scott Pruitt left the post with his deregulation goals far from complete, but experts say he managed to refocus the agency on industry priorities and left a significant administrative mark on it in his 17 scandal-filled months.

Pruitt kicked off his tenure with an ambitious deregulatory agenda that included starting the process to roll back several of the Obama administration's highest-profile environmental regulations, including rules aimed at power plants, oil and gas facilities, automobiles and Clean Water Act permits. All of those rollbacks are still in the proposal stage or earlier, and Pruitt ran into legal difficulties when he tried to delay some of the existing rules while the agency crafted new ones.

Vermont Law School professor Patrick Parenteau criticized Pruitt for attempting to delay rules that were in effect, such as a 2016 methane rule for new and modified oil and gas infrastructure. The D.C. Circuit struck down the delay of that rule in July 2017.

"You cannot suspend a rule that's in effect. That, literally, is day one of administrative law," Parenteau said. "And Pruitt did it three times."

Besides the D.C. Circuit ruling, a California federal judge in February nixed the EPA's bid to push back the deadline for industry to comply with new formaldehyde emissions standards. In the third example, the EPA had proposed delaying until October a deadline for states to report whether local areas have met tighter national ozone standards set in 2015 — but it then said it would stick with the original timeline.

Todd Maiden, a partner at Reed Smith LLP, said many environmental attorneys also were surprised by the "bare bones" nature of the EPA and Army Corps of Engineers' proposal to rescind the Clean Water Rule, an Obama-era measure designed to clarify the federal government's permitting jurisdiction under the Clean Water Act.

"I've heard several comments about sloppiness or similarly bare bones efforts in other regulatory documents that came out of the agency, though not as much recently," Maiden said.

Pruitt was likely hamstrung by the fact that he didn't have assistant administrators leading the EPA's air and water offices or a general counsel until the end of last year, meaning he and his staff were

crafting policies somewhat on their own. After Air Office chief Bill Wehrum, Water Office head David Ross and General Counsel Matthew Leopold were finally sworn in, more sophisticated work product began to emerge from the agency, such as a 93-page supplemental notice explaining the legal case for rescinding the Clean Water Rule, a document nearly twice the length of the entire initial rescission proposal.

Despite the setbacks, Pruitt did force a dramatic shift in the agency's traditional priorities, said Tom Lorenzen, a partner at Crowell & Moring LLP.

"Through both Republican and Democratic administrations, the EPA has been an agency that was focused on relatively aggressive implementation of the laws," Lorenzen said. "Pruitt has clearly changed the focus towards reducing the burdens on industry."

There are many ways in which Pruitt set the tone for the agency other than formal rulemakings, such as guidance documents and shaking up the agency's Science Advisory Committees.

With Wehrum at the helm of the Air Office, for example, the EPA issued guidance that eased Clean Air Act compliance burdens for facilities in a number of ways. And just a few days ago, Pruitt ordered Ross to draft rulemaking that would do away with the agency's power to veto at any time permits allowing waste from mining and infrastructure projects to be dumped into waters of the United States, including wetlands.

Bracewell LLP's Jeff Holmstead also credited Pruitt with "rebalancing" the EPA's relationship with states, cutting back on the agency's "flyspecking" of permit applications for projects and other oversight that was perceived as heavy-handed in some areas.

"His focus on cooperative federalism and returning authority to the states was a pretty meaningful thing, and I also think that he should get credit for a number of things that could be done with a stroke of a pen, without going through the regulatory process," Holmstead said.

Another key way Pruitt impacted the EPA was through his staff management. By many accounts, morale at the agency suffered as many career employees felt that Pruitt's deregulatory and business-friendly approach would run counter to the agency's mission of protecting human health and the environment. Parenteau said many longtime staffers have left the agency, along with scientists who have not been asked to return to consulting roles on advisory committees or are now ineligible because of Pruitt's policy that anyone who is receiving an EPA grant may not serve on such a body.

"It's like burning a library," Parenteau said.

Sierra Club Beyond Coal Campaign director Mary Anne Hitt said much of Pruitt's legacy rests in the hands of the courts, as environmental groups have sued over a multitude of measures and promised to continue the legal fight wherever they can. In that respect, Pruitt did a big favor to green groups by lighting a fire under donors, who by all accounts have reached into their pockets to help fund the organizations during the Trump administration.

"I believe much of what Pruitt's tried to do is a violation of the Clean Air Act or the Clean Water Act or some other statute that will ultimately never see the light of day," Hitt said. "So I don't know that anyone will be able to take credit for what Scott Pruitt set in motion."

--Additional reporting by Keith Goldberg and Christine Powell. Editing by Pamela Wilkinson and Aaron Pelc.

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