

## 4 Things To Know About The New EPA Chief

By **Christine Powell**

*Law360 (July 9, 2018, 6:52 PM EDT)* -- Andrew Wheeler assumed the role of acting administrator of the U.S. Environmental Protection Agency on Monday, taking the helm of the agency in the wake of Scott Pruitt's recently tendered resignation.

Wheeler had been serving as the EPA's second in command since his April confirmation by the Senate, a period of time during which the agency was plagued with headlines-grabbing and ethics-probes-inducing controversies over Pruitt's alleged inappropriate spending, use of staff and relationships with lobbyists.

While experts anticipate that the EPA will continue to implement the Trump administration's deregulatory agenda under its new leader, here are four things to keep in mind as Wheeler steps into Pruitt's shoes.

### **Unlike Pruitt, He's a Well-Known Washington Insider**

Pruitt, a frequent critic and legal opponent of the Obama administration's EPA during his tenure as Oklahoma's attorney general, was a newcomer to Washington, D.C., when he became chief of the agency. Wheeler, however, is not.

He worked in the EPA's Office of Pollution Prevention and Toxics for four years in the early 1990s, during the administrations of Presidents George H.W. Bush and Bill Clinton. He also served a six-year stint as the Senate Committee on Environment and Public Works' majority staff director, minority staff director and chief counsel.

Additionally, he worked for a couple years as chief counsel for former EPW Chairman Jim Inhofe, R-Okla., who last year called Wheeler "a close friend" and is known for bringing a snowball to the Senate floor in 2015 to refute climate change.

Kirsten L. Nathanson, a partner in Crowell & Moring LLP's environment and natural resources group, told Law360 the "meaningful differences" in Wheeler's background will be pivotal as he leads the EPA.

"He's former EPA, he's former Hill, which means he has a deep knowledge of the environmental laws, and he has a real understanding of the regulatory process, of how the agency works," Nathanson said. "He's an insider, as opposed to Mr. Pruitt. ... It's just a completely different background, and a more

traditional background for an EPA administrator, in my opinion.”

### **He Left the Public Sector to Lobby for the Coal Industry**

In 2009, Wheeler moved to the private sector by joining Faegre Baker Daniels Consulting, where he became a principal and team leader of its energy and environment practice group, as well as counsel at the law firm.

His work there included lobbying Congress on behalf of the coal giant Murray Energy Corp., the utility holding company Xcel Energy Inc., the uranium producer Energy Fuels Resources Inc., the trade group Nuclear Energy Institute and the South Coast Air Quality Management District, which oversees air quality in a large portion of Southern California, including Los Angeles.

As such, Seth D. Jaffe, a partner in Foley Hoag LLP’s environmental practice group, told Law360 he certainly expects Wheeler “to be an ally of the traditional energy industry. I think he’s their hook, line and sinker.”

Nathanson said his lobbying days should translate into an understanding of the importance of gathering input from stakeholders outside of the EPA.

“He was an external stakeholder trying to influence the agency. I would hope he would appreciate the value of hearing from the regulated community on building sustainable regulatory change,” she said.

Environmental groups, meanwhile, have voiced concern about Wheeler’s ties. Benjamin Longstreth, senior attorney for the climate and clean energy program at the Natural Resources Defense Council, told Law360 the conflicts between Wheeler’s current and former roles “abound.”

“[President Donald] Trump’s claim was that he was going to clean up Washington, and the way to do that is to have somebody who is independent of those conflicts and cares about public health and the environment running the agency,” Longstreth said. “He’s simply the wrong person to be doing that. At the moment, there’s no question that the course EPA has been on has been one of protecting the very same coal companies that Andrew Wheeler has been a lobbyist for.”

### **He’s Expected to Stay the Deregulatory Course**

Despite the contrast between Pruitt’s and Wheeler’s backgrounds, all signs indicate that their ideologies align. In a pair of tweets announcing that Pruitt was stepping down and that Wheeler was being elevated, Trump said he had “no doubt that [Wheeler] will continue on with our great and lasting EPA agenda. We have made tremendous progress and the future of the EPA is very bright.”

Following through on many of Trump’s campaign promises, Pruitt started the process of rolling 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 — and Wheeler is expected to pick up right where he left off.

“I don’t think this matters at all, except that he’s going to be less controversial,” Jaffe said. “Pruitt was doing exactly what Trump wanted to do, and Trump loved him for that. He loves being able to say, ‘I’m rolling back these terrible regulations.’ There’s no reason at all to think that any of that’s going to change.”

In fact, Wheeler may be more effective, between his in-house understanding of how to get things done and the windup of distracting controversies that swirled around Pruitt for months.

“He doesn’t have the baggage of these ethics scandals,” Nathanson said. “He doesn’t appear to have any burdens of political ambition. He’s been in Washington for decades, in two branches of government and the private sector. He’s going to want to be focused on how to implement the agenda.”

But Longstreth questioned whether the EPA’s regulations, all but guaranteed to continue facing legal challenges, will be upheld in court if the agency continues to “protect polluters” under Wheeler, even if he does run a tighter ship.

“I think the fundamental problem is, if your objective is to protect polluters instead of the public, it’s hard to draft rules that are consistent with the statutes that Congress wrote, because those statutes were written with the objective of protecting the public,” Longstreth said.

### **He’d Need to be Confirmed Again to Drop ‘Acting’**

It remains to be seen whether Trump intends to nominate Wheeler to serve as Pruitt’s permanent replacement — which would require him to be confirmed again by the Senate — or to leave him in an acting capacity on a long-term basis.

“That’s a question that’s wrought with political considerations,” Nathanson said. “The White House, I assume, will be trying to determine whether they want to advance a nominee through confirmation in the Senate.”

Such considerations likely include the impending confirmation process of a new U.S. Supreme Court justice, as well as the upcoming midterm elections.

When Wheeler was confirmed for deputy EPA administrator in April, it was by a 53-45 vote, with red-state Democratic Sens. Heidi Heitkamp, D-N.D., Joe Manchin, D-W.Va., and Joe Donnelly, D-Ind., joining Senate Republicans in opting for him.

“He was confirmed once already, not that long ago, and even at the time people said, ‘Well this is really like a vote on the administrator,’” Jaffe said. “So I don’t know why people would expect it to be any different. If Trump wants to get it done, I don’t see why the Senate couldn’t get it done.”

--Additional reporting by Juan Carlos Rodriguez and Keith Goldberg. Editing by Kelly Duncan and Breda Lund.

