

Dennis J. McLerran Remarks to
Society of Environmental Journalists
Thursday, July 6, 2017

I've been asked to set the stage for the panelists. And, as you heard from the introduction, I served for the last seven years as a Presidential Appointee for the Obama Administration as the Regional Administrator for EPA Region 10. so, as you might expect, I am not completely unbiased in my views on what I'm going to report out to you. But I will put some of the factual information forward on which Executive Orders and Presidential Proclamations may have significant impacts on the EPA and the environment. And, I'll also briefly outline the actions EPA Administrator Scott Pruitt has put in play with a bit of personal commentary shaded by my history.

So, in my ten minutes, here's what's been put in play —

The President has issued a substantial number of Executive Orders, Presidential Proclamations and statements that could fundamentally reshape EPA, Interior and all the Federal administrative agencies. And I emphasize could because of some of the checks and balances in our system. It's a long list —

1. **Executive Order 13766, issued January 24, 2017**


"An Order Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects."

For all infrastructure projects, including grid and telecommunications systems; repairing and upgrading ports, airports, pipelines, bridges and highways

High priority projects are identified by requests of Governors, Agency heads and a CEW process to establish expedited procedures and deadlines.

EO 13766 is combined with a Presidential Memorandum issued the same day that requires agencies to develop a permit streamlining action plan within 60 days.

Presidential memorandums directing moving forward with approvals for Keystone and Dakota access pipelines.

 And, representing the pushback that these EO's and memos will generate, I would note that the Corps of Engineers quickly acted on this and rescinded a requirement for further EPA review at Dakota Access. But on June 14, in a partial victory for the Tribes, a federal court held that the Corps had failed to address EJ and substantial controversy of the Project and needed to do more work.

2. **Executive Order 13771, issued January 30, 2017**

“Order on Reducing Regulation and Controlling Regulatory Costs.”

For every 1 new regulation issued, at least 2 prior regulations are to be identified for elimination.

For FY17, total incremental costs of new rules shall be no greater than zero.

Must be done consistent with APA and other applicable law.

Cost cap to come from OMB.

According to some of my former EPA colleagues, this has just slowed everything down. And, in my view, it’s just plain arbitrary.

3. **Executive Order 13777, issued February 24, 2017**

“Order Enforcing the Regulatory Reform Agenda”

Each Agency to establish a Regulatory Reform Task Force within 60 days.

External input must be sought

The Task Forces are to evaluate existing regulations and make recommendations to Agency heads re: repeal, replacement or modification, consistent with applicable law.



More pushback and resistance – Makah and Northwest Indian Fisheries letters.

4. **Executive Order 13778, issued February 28, 2017**

“Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule.”

Directs EPA and the Corps of Engineers to review the final rule and to publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law.

Requests suspension of current defense of the rule.

Extraordinarily, suggests considering interpreting the term “navigable waters” in a manner consistent with Justice Scalia’s opinion in the *Rapanos* case, where for many years now the Agencies have been following Justice Kennedy’s plurality opinion “rational nexus” test. That is what the Agencies continue to use during pending litigation and a rule re-write.

This was a very science-grounded rule, so this will be very interesting to follow. It was based on a review of over 1,200 scientific reports on what provides the integrity of rivers and stream flows. If you give up the headwaters and wetlands, the science shows

you lose flood protections and stream flows that produce the aquatic functions the Clean Water Act is intended to protect.

5. Executive Order 13781, issued March 13, 2017

“Order on a Comprehensive Plan for Re-Organizing the Executive Branch”


Within 180 days, OMB Director to propose a plan to reorganize governmental functions and eliminate unnecessary agencies, components of agencies and agency programs.

The plan is to include recommendations on any legislation or administrative measures necessary to effectuate the plan.

OMB Director is to consider whether all or some functions would be better left to states, local governments or the private sector through free enterprise.

April 24th Guidance Memo from OMB.

This is potentially a big part of the “de-constructing of the administrative state”

 I would suggest you watch this one closely.

6. Executive Order 13783, issued March 28, 2017

“Order on Promoting Energy Independence and Economic Growth”

Calls for an immediate review of all Agency actions that potentially burden the safe, efficient development of domestic energy resources.

Lots of work created here for Interior and EPA.

- Within 45 days, each Agency shall submit a plan to OMB.
- Within 120 days, each Agency shall submit a draft final plan of actions.
- Within 180 days, the plans are to be final

Rescinds Obama’s Climate Action Plan, the strategy to reduce methane emissions and rescinds past guidance on evaluating climate actions under NEPA.

Requires EPA to review, and if appropriate, revise and withdraw the methane rule for fracking – more on that in a minute.

Stays current defense of the rule.

Directs Secretary of the Interior to withdraw the federal land coal leasing moratorium; withdraw its methane rule; and directs the Secretary to review Interior’s fracking rules.

7. **Executive Order 13792, issued April 26, 2017**

“Order on Review of Designations Under the Antiquities Act”

Review of national monument designations made since January 1, 1996 where the designation covers more than 100,000 acres; where the designation after expansion is over 100,000 acres; or where the Secretary determines the designation or expansion was done without adequate public outreach.

Concerns about Hanford Reach, Bears Ears and others.



Pushback again – it is already being litigated, whether the President has the authority.

8. **Executive Order 13795, issued April 28, 2017**

“Implementing an America-First Offshore Energy Strategy”

Establish a U.S. policy to encourage energy exploration and production on federal lands, including on the Outer Continental Shelf.

Secretary of Interior to consider revising the schedule for oil and gas lease sales to be done annually.

Calls for reconsideration of the well control rule and the blowout preventer requirement.

Direction to refrain from designating or expanding marine sanctuaries unless there is a full accounting of mineral and energy development potential.

Requires a report within 180 days.



Already getting a lot of pushback – the BP Oil Spill Commission op-ed in NY Times; and states like California vowing to put state regulations in place.

9. **June 1 Presidential Statement**

Announcing the intention to withdraw the U.S. from the Paris Accord

Structurally, it will take three years or more to formally withdraw, so much more landscape to cover here. This has been extensively reported on, so I won't go into more depth here.

10. **EPA Administrator Scott Pruitt**

Meanwhile, over at the EPA, Pruitt has launched a very busy agenda, as well.

Even without appointment and confirmation of any of the Senate-confirmed Assistant Administrators or Presidentially Appointed Regional Administrators, he's been working mostly with a small group of political advisors with Oklahoma ties and strong connections to the oil and gas industry.

- Budget Cuts of 31% for the Agency – already DOA in Congress, but still a major threat to PS funding, salmon recovery funding and state environmental agency funding.
- Initiated a Superfund Task Force – to “streamline” the Superfund process and withdrew delegations to Regional Office Directors for cleanups costing over \$50 million.
- Pebble Mine Alaska Settlement – approved a settlement with developers, creating a pathway for permit applications to the Corps and initiating a withdrawal of proposed restriction on the development from EPA. I have pretty strong feelings about this one since I was the decisionmaker.
- Initiated Review and Withdrawal of the Clean Power Plan Climate Rule – the rule had, quite frankly, already been eclipsed by market forces favoring natural gas and renewables, but it has great symbolic significance.
- Ban of Chlorpyrifos – against the recommendations of EPA scientists, Pruitt quite surprisingly denied a petition to the Agency to ban chlorpyrifos, a neurotoxicant first developed before WWII as a chemical weapon. The ban was strongly supported by the applicable science. The spraying of chlorpyrifos on agricultural fields has been linked to groundwater contamination and has possible links to breast and lung cancer. A lawsuit on that action has been filed by the NRDC and an internal EPA appeal has been filed by seven State Attorneys General, including Washington Attorney General Bob Ferguson.
- 2015 Ozone Air Quality Standards Compliance Stayed or Extended – Pruitt’s action affects the EPA standards for methane emissions from oil and gas operations and the landfill methane rule, and, back on the pesticides front, has extended the compliance timeframe by a year for implementation of an important pesticide applicators rule that would have brought long awaited farm worker protections, which has big implications for Northwest farm workers.

Going back to the methane rule stay and repeal, on Monday, July 3, the D.C. Circuit struck down the delay for implementing the methane rules for oil and gas operators, in a decision that ensures the new Administration cannot just take such actions without following the strict procedures of the Federal Administrative Procedures Act – one of those checks and balances I mentioned earlier.

- Purge of EPA Science Advisory Panels – Pruitt has removed members of various panels by refusing to extend what previously were routine re-appointments. Watch who he appoints to these positions carefully.

- Delay of Risk Management Rules – Pruitt has put the brakes on the rules arising out of the West Texas fertilizer plant explosion that were carefully revised to reduce risks of another devastating explosion.
- Administrator Pruitt has been the primary and most vocal defender of the President’s decision to withdraw from the Paris Climate Accord.
- And, Pruitt has backed that up with several key actions, not only withdrawing the Clean Power Plan, but also announcing an EPA reconsideration of the January 7, 2017 final determination that EPA’s greenhouse gas standards for automobiles should remain in place out to 2025.
- Gina McCarthy’s January 17, 2017 final determination concluded the mid-term review required under the rule and found that costs were lower and technologies were fully available to meet the 55mpg standard phased-in through 2025.
- There is some good news, however, in that it appears Administrator Pruitt has concluded that he would not be successful in withdrawing California’s waiver under the Clean Air Act to set separate standards, so California will continue with its ZEV program, which drives innovation.
- But, back on the bad news side of the ledger, there have been published reports that Pruitt may be moving forward with an effort to withdraw the “endangerment finding” made by Lisa Jackson at the beginning of the Obama years.

The endangerment finding is required under the Clean Air Act to regulate new pollutants and was the subject of *Massachusetts v. EPA* where the Supreme Court held the EPA has Greenhouse Gas authority. By the statute’s terms, you must show that public health is endangered before launching a regulatory effort.

By the way, the finding made by Jackson was heavily supported by climate science from the Intergovernmental Panel on Climate Change and a whole host of peer reviewed scientific findings.

Apparently Pruitt’s approach to revising the science is to do a “red team—blue team” exercise to evaluate climate science. The “red team—blue team” approach comes from a military technique used to evaluate field operations.

In the view of many, such an exercise could politicize the science and move away from reliance on the peer review process.

My cynical view on this is that this is analogous to having NASA convene a “red team—blue team” exercise to evaluate whether man actually landed on the moon or if it’s all a hoax.

Or, having the U.S. Geological Survey convene a blue ribbon panel to evaluate whether the consensus that the earth is round is flawed in light of the views of flat-earthers like Shaquille O'Neal.

With that, I'll conclude with the remark that there is a lot for you to cover out there. In fact, too much, which might just be part of the strategy.

But, my core belief is that while there is a tremendous threat to the environment by this Administration, that will generate a powerful pushback. The laws haven't changed; the facts haven't changed; the science hasn't changed; and as long as the courts are not packed, there are very big obstacles to what the Administration is putting I play and we are just at the beginning of all of that.