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As final EPA power-plant rule nears, some call for WV to embrace clean energy

by Ken Ward Jr., Staff writer



Gazette-Mail file photo

In June 2014, West Virginia Gov. Earl Ray Tomblin (center) was joined by state government and business officials — including (left to right) Attorney General Patrick Morrisey, then-Rep. Nick Rahall, then-Rep. Shelley Moore Capito and American Electric Power President Charles Patton — at a news conference where they opposed the Obama administration’s proposal to fight climate change. The final version of the “Clean Power Plan” is expected to be released soon.

Sometime this month — perhaps as soon as Monday — the U.S. Environmental Protection Agency will announce its final rule to reduce carbon dioxide emissions from the nation’s electrical power plants.

West Virginia’s coal industry and its political allies will be quick to pounce. News conferences will be held. Lawsuits will be filed. The state’s leaders [will race to condemn the EPA’s proposal](#) probably long before anyone has the chance to digest the details of a massively complex rule the Obama administration calls its “[Clean Power Plan](#).”

Meanwhile, a small group of academics, activists and scientists will begin poring over the rule. Their goal: not to poke holes in the EPA’s regulation or fuel a legal challenge, but to sort out ways that West Virginia could actually come up with a plan to comply with the rule, and do the state’s part in fighting climate change.

“There’s really no reason West Virginia can’t comply with the Clean Power Plan, no matter what the final rule says,” said Evan Hansen, an environmental

consultant with the Morgantown-based firm [Downstream Strategies](#). “It’s just a matter of political will to move towards efficiency and renewables. So long as the final rule maintains the flexibility for each state to come up with its own plan by utilizing a mix of resources, West Virginia can do it.”

Over the past year, Hansen’s firm has worked with the West Virginia University College of Law’s Center for Energy and Sustainable Development to produce two reports aimed at examining ways the state could meet the proposed Clean Power Plan that the [EPA issued in June 2014](#).

The first report, [issued in October 2014](#), concluded that West Virginia could meet the proposed federal standards to reduce greenhouse emissions with a smart mix of energy efficiency programs, ramped up solar- and wind-power generation and moderate improvements at existing coal-fired power plants. It recommended that West Virginia create an energy efficiency standard that requires utilities to meet certain efficiency levels, implement an energy portfolio standard that actually focuses more concretely on renewable energy, and encourage more use of the state’s natural gas resources.

The second report, [issued in June](#), found that while the use of coal would decline under a plan to comply with the EPA’s proposal, it would still account for three-quarters of state electricity generation. It said that wind generation in West Virginia could more than triple by 2030 and solar capacity could increase from less than 2 megawatts to 410 megawatts over that same time. Continued natural gas growth holds “significant promise,” the report said, but the state should be careful “about changes that simply transition from over-reliance on one resource” — coal — to over-reliance on another.

James Van Nostrand, a WVU law professor who directs the center that co-authored the reports, said he understands the desire of state leaders to fight the EPA proposals but that West Virginia needs to also be directing resources into figuring out a path forward that involves living with a different national energy mix.

“West Virginia can still fight in Congress and in the courts to oppose what (the) EPA is doing, but we need to be planning for the likelihood that these rules — or some variation thereof — will be implemented,” Van Nostrand said last week. “The ‘just say no’ strategy for West Virginia, while politically popular, does a disservice to the citizens of West Virginia.”

While [speculation has been on the rise](#) in recent days, it’s still not clear exactly what the final EPA rule will look like or when it will be made public. The draft included an overall proposed target of [cutting power plant carbon dioxide emissions by 30 percent](#) by 2030, compared to 2005 levels. The EPA’s most recent [regulatory agenda](#) lists the expected release date of the final rule as August 2015.

Many observers seem to agree that one thing the EPA is likely to do in its final version is [give states more time](#) to draw up compliance plans. [One EPA document](#), which was uncovered last week by [E&E Publishing’s EnergyWire](#), indicated that the final rule might give states an additional two years, for a total of three years, to come up with their compliance plans.

Randy Huffman, secretary of the West Virginia Department of Environmental Protection, said his agency would welcome the additional time.

“That makes it a little easier to come up with some rational response,” Huffman said.

Still, Huffman said, the rule creates huge challenges for his agency and other environmental regulators.

“The complexity of trying to pull it off is not something we are looking forward to,” he said.

During the EPA's public comment period, the DEP submitted [lengthy technical comments](#), arguing among other things that the federal proposal was illegal.

"The proposal is fundamentally, and fatally, flawed," the DEP comments said. "It suffers from many problems, which simply cannot be overcome."

Gov. Earl Ray Tomblin, a Democrat, [has not yet said](#) if he will go along with a proposal from Senate Majority Leader Mitch McConnell, R-Ky., to simply boycott the EPA final rule by refusing to submit a state compliance plan.

Legislation passed earlier this year [would require approval from lawmakers](#) before West Virginia could submit any compliance plan to the EPA. Fred Durham, director of the DEP's Division of Air Quality, said any new air pollution rules, or changes to existing rules made as part of a compliance plan, already would have needed legislative approval. This year's legislation mandates that the entire compliance plan receive legislative approval as a package, Durham said.

Republican Attorney General Patrick Morrisey has already [said on Twitter](#) that his office plans to challenge the final EPA rule in court. Morrisey's office was among those who, in June, [lost a legal bid](#) to challenge the EPA rule before it was even finalized. Last week, lawyers for a coalition of environmental groups that support the EPA's effort [predicted that continued legal challenges to the final rule also would fail](#).

Bill Raney, president of the West Virginia Coal Association, said last week that he doesn't think there's anything the EPA could say in the final rule that would change his view that the agency's efforts are wrong, illegal and are aimed at destroying the mining industry.

"You can put me in the 'denier' category," Raney said, "because I just don't think you need to cut the carbon dioxide to the extent that they want to, especially given what it is doing to the economy."

Scientists say [drastic reductions in carbon dioxide emissions are urgently](#) needed to avoid the most serious impacts from climate change. The U.N.'s Intergovernmental Panel on Climate Change, for example, [has said](#) the warming of the planet is "unequivocal," citing a range of evidence that includes temperature measurements, melting glaciers, declining sea ice and increased concentrations of greenhouse gases.

Tom Rodd, project director of the Friends of Blackwater's Allegheny Highlands Climate Change Impacts Initiative, has been working to show the public and policymakers that climate change effects already are being felt in West Virginia's mountains. The group is planning [a second conference](#) on the issue for October, at Blackwater Falls State Park.

"Here in West Virginia, the markets are telling us that the train to a low-emissions global energy economy is leaving the station," Rodd said. "Our leadership needs to face the fact, and get on board. It will not be easy, but there is no alternative — for our own and our children's sakes."

Jeremy Richardson, a West Virginia native from a coal-mining family who is now a senior energy analyst with the Union of Concerned Scientists, agreed.

"I think West Virginia leaders need to acknowledge, once and for all, that it's necessary to rein in carbon emissions," Richardson said. "Yes, we will have to do more to achieve the ultimate targets, but I'm confident that, given the flexibility inherent in (the) EPA's proposal, West Virginia can get there — but not if our leaders continue to keep their heads in the sand."

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