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EPA Critics' Drag on Rules Is No Favor to Business: Commentary

By Michael Livermore | April 07, 2011 12:00AM ET

(Bloomberg) -- The U.S. Senate is debating a series of amendments to diminish or remove the Environmental Protection Agency's ability to regulate greenhouse gases under the Clean Air Act. Regardless of the outcome there, the conservative assaults on the EPA's ability to restrict climate-changing emissions are likely to continue, creating uncertainty for a host of other environmental rule-makings.

Recent climate regulations, which took effect in January, became the only way the U.S. could limit greenhouse gases after Congress failed to pass legislation backed by President Barack Obama to create a cap-and-trade system for pollution allowances.

Now, with anti-EPA critics putting the agency at the top of their watch list, it must face the political reality that any strong public-health protections will have enraged lawmakers beating down its door.

The fight over greenhouse gases sets the tone, sending the agency into a defensive posture on a range of other issues. For example, the EPA has put off making a final decision on its coal ash rule so that it can count the 450,000 public comments -- one imagines mostly non-substantive -- that were submitted by the public.

Knowing that certain voices in Congress will cry out no matter what EPA does, it's not likely to accelerate new protections and may slow down existing greenhouse gas standards. At the same time, the agency is unlikely to back down too much from its previous plans.

Rules Completed

The EPA has a number of rules recently completed or in the pipeline, including protections to limit hazardous air pollutants from utilities and industrial boilers and performance standards for new sources of greenhouse gas emissions. These are likely to proceed even in the face of loud objections.

And under federal agency guidance, states are in the process (albeit slowly) of requiring major greenhouse gas polluters to use the best available technology to control emissions.

The costs of environmental protections like these and the greenhouse gas standards tend to be justified by the benefits, returning economic payoffs for the public many times larger than the investments made by businesses. Avoided premature deaths, sick days, doctors visits and many other benefits are a boon to Americans and come at a small cost to industry. So the EPA will rightfully be loath to give them up.

Sustained Attacks

While the in-house momentum will tend to move protections forward, sustained attacks on climate may nevertheless stall the EPA's ability to deal with even non-climate rules.

In March, the agency announced it will delay finalizing a set of new protections governing coal ash. Industry has expressed fears that new rules could hamper the reuse of this material. The economic logic of this objection is shaky: Consumers would have to be knowledgeable about things like the Code of Federal Regulations and the components of building materials, and flighty enough that a mere nomenclature change sends them into waves of panic.

Standard economic analysis would predict that the new rules will increase reuse because disposal will be more costly. But there is clear political logic in attempting to undermine protections: coal-state representatives are not happy about the rule because it would impose costs on important constituencies back home.

As Democrats and Republicans turn their attention to the 2012 election cycle, the theatrics and politically oriented votes in Congress will likely become more common. This posturing, even when it has no direct effect on existing law, can still send shock waves throughout the regulatory process as agencies scramble to contain the public relations damage while still doing their jobs.

Appropriations Riders

The appropriations process offers opponents another opportunity to hinder the agency by slashing budgets or attaching riders to scale back EPA's authority. As the energy debate continues, there will be plenty of opportunities for Senator James Inhofe, a Republican from Oklahoma and perhaps the leading anti-EPA voice in the Senate, to try to scale back the agency's authority.

No matter what, the continued threats to EPA will linger -- if nothing else, in the form of constant calls for Administrator Lisa Jackson to testify before House committees chaired by Republican critics.

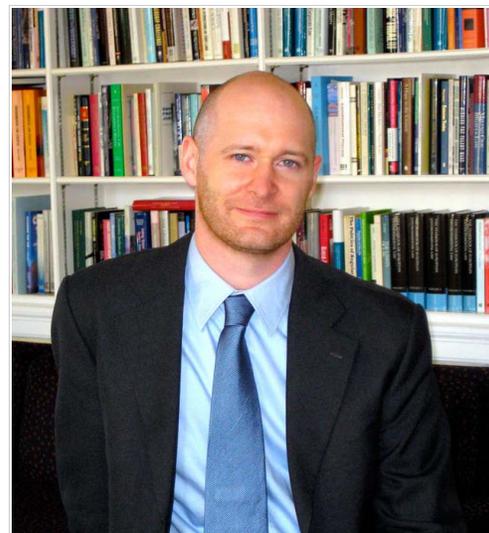
The consequences of this fallout are not likely to be pretty. Rather than promoting an about face by the administration on environmental protection, attacks in Congress will probably just slow things down -- adding delay to the already long rule-making process.

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Commentary by Michael Livermore, NYU Institute for Policy Integrity.

That means more uncertainty for businesses that need clear signals from regulators in order to plan and invest.

(Michael Livermore is executive director of the New York University School of Law's Institute for Policy Integrity. The opinions expressed are his own.)

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