



A Summary of EPN's All-Hands Meeting: *West Virginia vs EPA* Decision and the Inflation Reduction Act Friday, August 19, 2022

Rob Brenner, former Director, Office of Analysis and Policy Review, EPA Office of Air and Radiation, highlighted what limits the recent SCOTUS [*West Virginia vs. EPA decision*](#) places on EPA's actions to control greenhouse gasses from the electric power sector and the options EPA still has in its regulatory tool kit. **Jeremy Symons**, EPN consultant and former Climate Policy Advisor, EPA Office of Air and Radiation, led a discussion about the [opportunities and challenges for EPA climate action](#) under the newly signed Inflation Reduction Act and the status of the side deal on "permitting reform" led by Senator Joe Manchin.

West Virginia vs. EPA

Although the W. VA v. EPA decision is momentous, the take-aways are pretty straight-forward. The decision does not matter much for the Clean Power Plan since power plants are already meeting those limits. However, the court's assertion of a "Major Questions Doctrine" makes it not only difficult for EPA - but also for other federal agencies—to use the regulatory process to address a significant public policy issue. EPA must show that Congress gave it fairly explicit authority and direction on how to regulate it. This will play out over the next decade as both new and existing regulations are litigated. The outcomes of those cases will define what the doctrine means. Meanwhile, EPA will need to decide how to proceed without waiting for that process to play out.

Following the anti-regulatory fervor of the Reagan Administration, Bill Reilly prodded EPA staff to supplement the agency's rulemaking role with additional tools. These included market-based approaches, regulatory negotiations, information-based strategies like Energy Star and the Toxic Release Inventory; and linking environmental protection to special places like the Great Lakes, Chesapeake Bay, ocean beaches, and mountain vistas.

This time, the attack on regulations is coming from the courts. However, EPA's response will probably be similar: promulgate regulations where still possible, use existing tools and develop new tools to supplement those actions. There are also more ways to convince company executives and industry sectors to clean up. Low cost monitors and web-based environmental performance scorecards allow the public to put pressure on companies to improve. Growing numbers of shareholders are using those tools to push companies to operate more sustainably. In addition, progressive states are requiring companies to meet tougher standards thereby demonstrating they can be achieved and undercutting the excuses of laggard companies. Finally, there are hundreds of billions of dollars of tax incentives, subsidies, demonstration projects and R&D support, along with the agency's ability to partner with DOE and its labs, DOT, DOI, USDA and Commerce to green the economy instead of fighting with them.

The challenge for EPA is to combine these tools in ways to incentivize companies to clean up, and—ideally— to operate sustainably. The most effective mix of carrots and sticks will vary by sector. An emphasis on achieving environmental justice and the tracking of environmental performance should become constant reminders that these sector-by-sector clean up strategies have to reflect the needs of all stakeholders – not just the companies.



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There is an added public policy advantage of these industry-based strategies: once companies decide to “go green” they can do it with remarkable speed and results compared to the regulatory process. The rapid development of the F-150 Lightning truck and the long waiting list to buy it is an excellent example of this.

Inflation Reduction Act

There are several big takeaways for EPA from the IRA. The law provides clear authorization and funding from Congress for EPA to do work focused on disadvantaged communities and EJ communities.

The bill is full of incentives, including:

- \$3B for environmental justice block grants
- \$5B fund for EPA to assist states/municipalities/tribes to combat GHG pollution, reflecting a need to get back to basic federalism on climate change with states and the federal government in alignment.
- The Greenhouse Gas Reduction Fund, \$27B that EPA is being given to seed Revolving Loan Funds to reduce pollutants, with \$15B earmarked to EJ communities.

The IRA is also the second time that Congress has given EPA greenhouse gas (GHG) pricing authority. The methane fee program (up to \$1500/ton) gives a practical tool for EPA to use and includes some money for smaller drillers and producers. Congress previously gave EPA authority to implement the HFC cap and trade program.

From a regulatory perspective, the agency now has to figure out new baselines for pollution from the effects of these incentives, which should reduce the cost for industry to achieve regulatory goals, and perhaps allow EPA to aim for more stringent pollution controls.

The IRA includes additional funding for EPA in a number of areas, including:

- \$200M for monitoring (\$117M for fence-line air pollution monitoring)
- \$25M for modernizing enforcement (core recommendation reset enforcement)
- \$40M to staff up NEPA/permitting reviews