



## MEMORANDUM

To: President Mitch Carmichael, Chair  
Speaker Tim Armstead, Chair  
Joint Committee on Government and Finance

cc: Mike Hall, Chief of Staff  
Woody Thrasher, Cabinet Secretary, West Virginia Department of Commerce  
Joshua Jarrell, Deputy Secretary/General Counsel, West Virginia Department of Commerce

From: West Virginia Office of Energy

Date: October 12, 2017

Re: Quarterly Report Ending September 30, 2017  
Legal Challenges Potentially Impacting the Energy Industry

As mandated by West Virginia Code §5B-2F-2(s), the following information presents legal challenges with the potential to impact the state's energy industry. This submission was prepared by David Flannery, Steptoe & Johnson PLLC. Reports are submitted on a quarterly basis.

**REPORT ON LITIGATION RELATED TO**  
**ENERGY AND NATURAL RESOURCES IN WEST VIRGINIA**

**THIRD QUARTER 2017**

**1. D.C. Circuit Allows Oil and Gas Methane Rule to Take Effect**

The D.C. Circuit on August 10, 2017, rejected a request by states and industry groups to reconsider a July 3, 2017, panel ruling that lifted the U.S. Environmental Protection Agency's stay of portions of a rule intended to curb methane emissions from new oil and gas infrastructure.

The June 2016 rule set new greenhouse gas and volatile organic compound standards for new, reconstructed and modified oil and gas sources. Under the rule, oil and gas companies are required to find and repair leaks, capture gas from the completion of hydraulically fractured wells, limit emissions from new and modified pneumatic pumps, and limit emissions from several types of equipment used at gas transmission compressor stations. The new rule, now effective as of July 27, 2017, includes a deadline of June 3, 2017 for regulated entities to conduct an initial monitoring survey to identify leaks from equipment.

After President Donald Trump in March issued an executive order directing EPA Administrator Scott Pruitt to review and potentially revise the rule, Pruitt granted administrative reconsideration of certain requirements, and the agency in June issued a three-month delay of leak detection and well site regulatory provisions. The Court's decision of August 10 lifts that stay allowing the rule to take effect.

**2. Clean Power Plan Litigation Status Report**

On September 7, 2017, the Environmental Protection Agency ("EPA") filed a Status Report in the ongoing Clean Power Plan litigation (*State of West Virginia v. EPA*), which has been pending before the D.C. Circuit Court of Appeals for two years.

EPA's most recent status report is noteworthy because the agency represents that it has begun the interagency review process of the alternative to the Clean Power Plan and has transmitted a draft proposed rule to the OMB Office of Information and Regulatory Affairs ("OIRA"). Once OIRA and EPA finish their internal review of the draft rule, the EPA Administrator will sign the proposed rule, and EPA publish it in the Federal Register for public comment. EPA reports that the proposed rule will likely be signed in the Fall of 2017.

In fact, on October 9, 2017, EPA Administrator Pruitt announced that he would sign a proposal to roll back the Clean Power Plan. A formal publication of that proposal in the Federal Register is expected soon.